J. rel. 233

THE

Mirrour of Justices:

WRITTEN ORIGINALLY

In the old *French*, long before the Conqueſt; and many things added,

By ANDREW HORNE:

To which is added,

The DIVERSITY of COURTS and their JURISDICTION.

Tranſlated into *Engliſh* by W. H. of *Gray's Inn*, Eſq;

Jura publica certiſſima ſunt vitæ humanæ ſolatia, infirmorum auxilia, impiorum fræna.

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J. Rel. 233

BIBLIOTHECA
REGIA
MONACENSIS.

The Tranſlater to the READER.

Courteous Reader:

IT hath ever been an Objection (grounded upon Ignorance,) which hath been made by the meaner ſort of the people to traduce the common laws of *England*, and to bring the profeſſors thereof into contempt, to give out ſpeeches, and caſt it in the teeth (as it were) of them, that the ſaid laws are built but upon a ſandy foundation, *viz.* the conceits of a few men, and that they are not grounded upon the laws of God, from which all laws of men ought to flow, as from a clear and pure fountain.

This vulgar conceit and objection hath been principally nouriſhed amongſt

them, becauſe the common laws have been kept from their view and underſtandings, being for the moſt part publiſhed in the *French* tongue.

I muſt ingenuouſly confeſs, that ſince it is a received maxim amongſt us, that ignorance of the law doth excuſe no man, that it were good that the fundamental laws were publiſhed in our mother tongue, that ſo no perſon might be miſconuſant thereof. And I have obſerved, that it hath been the courſe and care of moſt of the late publiſhers of our laws, to put them forth in ſuch language as the common people might the better know them, and practiſe the due obſervation of them. But that I may with the more eaſe and plainneſs anſwer the frivolous objection, remove that fond conceit of the ignorant, vindicate our common laws from ſo foul an aſperſion, and let the objectors ſee from whence our laws deduce their original (though the learned author in the enſuing treatiſe hath in part done it); yet for the clear manifeſtation thereof I ſhall intreat the courteous reader to be pleaſed favourably to accept of this ſhort breviary of the grounds and originals of

the

the common law, which I ſhall apply only as an introduction to the work which followeth.

All laws are comprehended under a three-fold diviſion: 1. The law of nature. 2. The law of God, of faith, or of the goſpel. 3. The law of man, made upon the dictates of reaſon; upon all which laws the common laws of *England* are built, as upon firm and ſure foundations.

The firſt is, that which is called the law of nature, which is ordained of God, and may be called God's law, united unto man's nature; for what was that image of God in man, conſiſting of righteouſneſs, holineſs and truth; but *lex primordialis*, a primordial law exactly requiring, and abſolutely enabling the performance of duties of piety unto God, and of equity to men both in habit and art. * *Antiqua ſcripta fuit lex in hominum mentibus, et vigebat.* God in the beginning wrote his laws in men's hearts, and therefore according unto the opinion of moſt learned Divines

* St. *Ambroſe.*

and Legiſts: *Lex naturæ nihil aliud eſt quam participatio legis æternæ in rationali creatura*; and according to others, *Lex naturæ eſt lumen ac dictamen illud rationis, quo inter bonum & malum diſcernimus.* The moſt principal precepts of the law of nature (which are alſo maxims and grounds of the laws of *England*) are 1. *Deum venerari.* 2. *Honeſte vivere.* 3. *Patriæ magiſtratibus, & parentibus obedire.* 4. *Alteri ne facias quod tibi non vis fieri.* 5. *Suum cuique tribure.* 6. *Tollere nocentes e medio propter ſervandam publicam ſalutem.* 7. *Rerum dominia, proprietates, poſſeſſiones, & uſum diſtinguere*; To honour God, to live honeſtly, to obey magiſtrates, *&c.* to do as we would be done unto, to render every one his due, to puniſh the guilty for the preſervation of the public, to diſtinguiſh and ſettle the dominion, propriety, poſſeſſion, and uſe of temporal things.

Theſe fundamentals of the law of nature are not principally acquired or obtained by art, or doctrine, but naturally ingrafted. Learning and inſtruction ſerve only to bring forth and increaſe thoſe natural ſeeds; but neither learning

ing nor inſtruction do principally and originally give them; they are (ſaith *Socrates*) but as ſkilful midwives, whoſe office it is only to further the birth of the child, not to beget the child.

The ſecond is the law of God, the law of faith, or of the goſpel; which may well be called *lex amoris*, the law of love. Is not this nation chriſtian? Hath it not profeſſed the common faith for 1200 years? Do not our laws all tend to the maintaining of peace, concord and love, fruits of the goſpel? Are not all ſtatutes, acts of parliament, conſtitutions, cuſtoms, made and uſed for the government of this people, founded upon ſuch principles? Let the objectors cite me any law in uſe now amongſt us, which is not warranted by ſome expreſs goſpel text, either in the letter, or not by neceſſary conſequence drawn from it; ſure I am that every law, cuſtom, uſage, privilege preſcription, act of parliament, or prerogative, which doth exalt itſelf above or beyond the law of God, the law of Chriſt, or the law of nature, hath ever by the worthy ſages of our laws been declared to be void; it were to no purpoſe to inſtance upon particulars, it is

ſufficient to ſay, that as it appertaineth to all godly and chriſtian men to obſerve and keep this law; ſo to let all men know, that we are inſtructed by the worthy profeſſors of the goſpel of Chriſt, in the fundamental rules and grounds of this law, to live after it, and to direct all our words and actions according to it, and by it; and therefore I ſhall not ſay more of it.

The third the laws of men, and the municipal laws of this realm, which although they may ſeem to ſome to have their progeny from men, (for as *Solon* to the *Athenians*, *Lycurgus* to the *Lacedæmonians*, *Numa Pompilius*, and *Actius Claudius* to the *Romans*, were accounted the principal authors and givers of law to thoſe ſeveral nations; ſo *Alured* or *Alfred*, *Athelſtone*, *Edmundus*, *Edgar*, *Canutus*, *Edward* the Confeſſor, *William* the firſt, and *Henry* the firſt, called *Beauclark*, noble and famous Princes of this nation, part of all whoſe laws are yet in force, were the chief promulgers of many neceſſary and good laws yet in uſe with us in this realm); yet if we look into their laws we ſhall find, that moſt of them have their riſe from a

higher

higher power, from the law of God, and the law of faith. It is true, that ſome Hiſtoriographers * have written, that the original of the common laws now in uſe, flowed firſt out of *Normandy*, I ſhall decline that as to the generality; but as *Cicero* was bold to derive the pedigree of his *Roman* law from the great God *Jupiter*, ſo I hope without offence I may be emboldened in the perſon of our common law, to ſay, That when the laws of God and Reaſon came firſt into *England* then came I in.

The temporal laws of this kingdom may be divided into three parts. 1. The general or common law. 2. The cuſtomary law. 3. Statute or parliament laws; the end of all which are, *ut ſopiantur jurgia, & vitia propulſentur, & ut in regno conſervetur pax & juſtitia.*

The common law is nothing elſe but pure and tried reaſon (*reſponſa prudentum*) allowed and known, containing the principles and maxims of law (con-

ſonant

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* Dan. Hiſt. in tit. *Will.* Conq. *Cicero* l. 1. *de legibus.*

ſonant unto the laws of God) with a certain method for the orderly proceeding therein; the reſt conſiſting in the minds of the ſages of the law, ready by argument to approve what is truth, and under-propt with authorities to condemn what is falſe.

The cuſtomary laws are certain ancient cuſtoms grounded upon reaſon, which abridge the courſe of the common law. The diverſity of cuſtoms have grown by reaſon of the ſeveral nations who have had government over this kingdom; as 1. The *Britains*. 2. The *Romans*. 3. The *Britains* again. 4. The *Saxons*. 5. The *Danes*, and laſtly the *Normans*; all which ſorts of people have left behind them within this realm part of their language, and part of their country uſages.

The cuſtoms within the realm are called by ſeveral names:

As { *Cuſtoms.* *Preſcriptions.* *Uſages.* *By-Laws.*

Cuſtoms

Cuſtoms extend properly to countries, cities, boroughs, towns corporate, and large ſigniories. 2. Preſcriptions run with perſons who have capacities to have intereſts and properties. 3. Uſages refer to places or towns not incorporate, as to inhabitants and the like. 4. By-laws are properly made in courts by the tenants of the manor or precinct, or out of courts, with a common conſent for good order and neighbourly uſage. The efficient cauſes of good and lawful cuſtoms are, reaſon and time, the one begetting, the other bringing forth and continuing the ſame; in one place Maſter *Lit.* ſaith, this is a good cuſtom, becauſe it ſtands with ſome reaſon; in another, this is a void cuſtom becauſe it is againſt reaſon.

3. The laſt is ſtatute or parliament laws; Parliaments have been ancient, they were in the time of the *Saxons*, long before the *Norman* conqueſt, (for as the proverb is) in the time of the *Danes*, the laws lay then in water, the people were governed rather by princes wills than public laws; for then (as one ſaith) *Sepultum fuit jus in regno, leges & conſuetudines ſimul ſopitæ, temporibus illorum prava*

prava voluntas, vis & violentia magis regnabant, quam judicium in terra. And although in the *Saxons* time I find the uſual words of the acts then to have been, *edictum*, *conſtitutio*, little mention being made of the commons, yet I further find that, *tum demum leges vim & vigorem habuerunt, cum fuerunt non modo inſtitutæ ſed firmatæ approbatione communitatis.*

Our author and others tell us, that the adminiſtration of juſtice was only originally in the crown, and kings in their own perſons rode circuit every ſeven years through the realm, to hear the complaints of their people, and to redreſs public grievances. But after the diviſion of the realm into ſhires, public courts were erected; as the county court, ſheriffs turns, hundred court, court leets, views of frankpledges, and court barons, for the conſervation of the king's peace, and the hearing and determining of all differences, debts, contracts, *&c.* which might ariſe betwixt party and party; and all perſons were ſorted into companies or ſocieties, wherein ten of the principal men called, *capitales plegii*, or *franci plegii*, becauſe they were freemen,

ſtood

ſtood as ſureties for the reſidue, that they ſhould ſtand to juſtice, and not fly from it when they had committed any offence; the law of Saint *Edward* is moſt excellent to that purpoſe in theſe words; *Eſt quædam ſumma & maxima ſecuritas qua omnes ſtatu firmiſſimo ſuſtinentur, viz. ut unuſquiſque ſtabiliat ſe ſub fidejuſſionis ſecuritate,* (*quod Angli vocant friburgher*;) *hæc ſecuritas hoc modo fiebat, quod de omnibus villis totius Regni ſub fidejuſſione decennali debeant eſſe univerſi:* and to that purpoſe alſo is the ordinance of king *Alured: Decrevit Aluredus ut liberæ conditionis quiſque in centuriam aſcriberetur aliquam, atque in decemvirale conjiceretur collegium*; the difference only conſiſting in this, that king *Alured*'s law extended but to freemen, Saint *Edward*'s to all men.

This *decennalis fidejuſſio*, or *decemvirale collegium*, by our author is called the decennery, who were charged to bring forth the perſon of every offender to anſwer unto the law; whereof Mr. *Bracton* ſpeaketh in theſe words: *De eo autem qui fugam fecerit* (he ſpeaketh of one after a felony committed) *diligenter erit inquirendum ſi fuerit in franciplegio & decenna,*

cenna, & tunc erit decenna in miſericordia coram juſticiariis quia non habent ipſum malefactorem ad rectum. And according to that law, if a felon after his flying, or conviction, were poſſeſſed of goods, the town or decennary was anſwerable for the ſame. And if the ſame were imbezzled, or holden from them, the decennary might ſeize thoſe goods in whoſe poſſeſſion ſoever they were found; as appeareth by 3 *E.* 3. Itin. North, *Fitz. Coron.* 366. *Quod vicecomes & decennarii ſeiſire poſſunt cattalla felonum in manus domini Regis; et vic. cattalla illa deliberabit villæ ad reſpondend. Regi in itinere, quod ſi vic. nec decennarii ſeiſierint villa reſpondebit dom. regi in itinere*; but this law hath been ſince altered by the ſtatute of 3 *E.* 3.

I have, Courteous Reader, ſtood the longer upon theſe things, as well to vindicate the common laws from thoſe weak cavils of the ruder ſort, as to demonſtrate the care our ancient kings and counſels have had for the peaceable Government of the people of the land, according to the right rules of juſtice, deduced from the law of nature, of God, and of right reaſon; and I wiſh that

Princes

To the Reader:

Princes in this age would conſider and put in practice, that golden rule of *Demoſthenes*; *Bene gubernare, recte judicare, juſte facere*; ſo ſhould their kingdoms flouriſh, and they themſelves be in high eſtimation in the eyes of all their people.

In theſe diſtracted times, wherein the fundamental laws, and liberties of the ſubject have been by a malignant party ſo much oppoſed, I have offered this treatiſe, intitled, *The Mirrour of Juſtices*; I have tranſlated the ſame out of the *French* tongue into *Engliſh*: in this book many of thoſe fundamental laws ſo much of late called upon, are to be found (though I do not warrant all in this book to be law at this day: many of the laws being obſolete, and altered by acts of parliaments and common uſages) it hath been ſome difficulty for me to finiſh it: and although that the manuſcript copy be in the original very imperfect; the *French* impreſſion by miſ-joining of words in many places without ſenſe, and falſe printed; the terms of law therein for the moſt part obſolete and worn out; yet have I endeavoured (as all tranſlators of books,

eſpecially

eſpecially of books of the law, ought) to keep myſelf cloſe to the words and meaning of the author, and of the law then in uſe and practice, well knowing, that laws many times have their interpretation according to the ſtrict letter, and not according to ſuch flouriſhes of rhetoric and oratory as may be put upon them.

I entreat thee, Courteous Reader, to accept of it as it is; if thou find any errors in the tranſlation (as I ſuppoſe thou mayeſt do many) to paſs them over, or amend them: if thou find any thing in the work itſelf which may advance the common laws, or the liberties of the ſubject, or ſet forth the true prerogative of Kings, to weigh them in the balance of juſtice: if thou find any thing therein not fit to be publiſhed in theſe days of diſtraction betwixt the king and people, conſider that this work was written in the time of king *Edward* the firſt: conſider again, it is not mine, but the author's; who for his antiquity and learning in the laws of the realm then in uſe, hath found the favour

and honour to be cited by many of the grave ſages of our public laws; ſo I commend it to thy favourable acceptance, and bid thee farewell:

Thy friend, who in his deſires ſtrives that the common laws of the land may now and for ever flouriſh.

W. H.

J. ILE

THE

PREAMBLE.

WHEN I perceived divers of thoſe, who ſhould govern the law by rules of juſtice, to have a reſpect to their own earthly profit, and chiefly to pleaſe lords, and their friends, and to have a reſpect thereunto, and not to give their conſents, that the right uſages ſhould be ever put in writing, whereby power might be taken from them to pervert judgment, and others to baniſh or diſinherit, without puniſhment for the ſame; covering their offences by the exceptions of error

and ignorance, never or little regarding the Souls of offenders condemned by their judgments, as their duties and places required; having uſed to judge the people according to their own heads by abuſions, and by the examples of others, erring in the law, rather than by the rules of the Holy Scripture, greatly to have erred from the true underſtanding thereof, building without any foundation, and to judge and have cognizance, and juriſdiction in that which they little underſtood, both in the law of the land, and of the law of the perſons; as it is of thoſe who take upon them Art to pronounce falſe judgments, and by their executions, falſly to pervert the privileges of the KING, and the ancient rolls of his treaſure. Taking the ſame into my ſerious conſideration, and the foundation and original of the uſages of *England* given by the law, together with the rewards of good judges, and

the

the punishments of others; I thought it needful (wherein my companions gave me their assistance) to study the Old and New Testament; and therein we found, that the law is nothing else but rules, delivered by our holy predecessors in the Holy Scriptures, for the saving of souls from perpetual damnation, notwithstanding that the same were disused by false judges. And we found that the Holy Scripture remained in the Old and New Testament.

The Old Testament contained three orders
- The Law.
- The Prophets.
- The Hagiographies.

In the Law there are five volumes.
- Genesis.
- Exodus.
- Leviticus.
- Numbers.
- Deuteronomy.

The Preamble.

In the order of the prophets are eight volumes.

Joſua.
Judges.
1 2 Samuel, called 1 and 2 book of Kings.
The 1 and 2 book of Kings, called 3 and 4 book of Kings.
Iſaiah.
Jeremiah —Ezekiel.
The books of the 12 ſmall prophets.

In the order of Hagiographie are

Job.
The Pſalms.
Proverbs of *Solomon*.
Eccleſiaſtes.
The Song of *Solomon*.
Daniel.
Paralipomenon.
Eſdras.
Heſter.

And beſides theſe there are books in the old Teſtament although they are

Not

Not authorized Canonical.

- Tobie.
- Judeth.
- Maccabees.
- Ecclesiasticus.

The New Testament contains three books.

- The Evangelists.
- The Apostles.
- The holy Fathers.

The Evangelists contain four volumes.

- The Epistles of St. *Paul.*
- The Epistles of the Canon.
- The Revelation.
- The Acts of the Apostles.

The writings of the apostles contain four volumes.

Of the writings of the fathers there is no certain matter agreed upon.

And we find that our laws were agreeing to scriptures, and that they were in a language best known both for the help of us and the common people.

The Preamble.

And for the condemning of falſe judges, I compiled this little book of the law of perſons into five chapters, that is to ſay,

1. Of offences againſt the peace.
2. Of actions.
3. Of exceptions.
4. Of judgments.
5. Of abuſions.

Which book I have called *The Mirrour of Juſtices*, according as I have found their virtues, and the moſt excellent ſubſtance after the time of king *Arthur*, uſed by holy uſages according to the rules aforeſaid; and I deſire you that you would amend the defects thereof, according to ſuch lawful and true warrants as you prove both to learn the truth, and confound the daily abuſes of the law.

THE

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CHAP. I.

SECT. I.

Of the offences againſt the peace.

Of the original of the law.

ALmighty God ſhewed more love to man than to any other creature; when he made him after his own image, and gave him underſtanding; conſidering that he ſtood continually ready to fall into ſin by three manner of adverſaries, and therefore he gave the law to force and drive ſinners to ſalvation by earthly puniſhments; that for the pure love of God men would abſtain from ſin, and thereof made *Moſes* their teacher, which place the Pope now holdeth.

That law by ordinance of our holy predeceſſors is divided into two volumes; into the canon law, which conſiſteth in the

amendment of ſpiritual offences; firſt, by admonition, prayers, reproofs, excommunication; ſecondly, into the written law, which conſiſteth in the puniſhing of temporal offences, by ſummons, attachments, and puniſhments or penalties.

Of the ſpiritual law, the prelates judged; and lay princes of the other law: the law whereof this ſum is made, is the written law of the antient uſages warranted by the holy ſcripture. And becauſe it is given to all in general, it is called the Common Law. And becauſe there was no other law but that, were general counſels and parliaments in uſe, and that diverſly in ſeveral places, according to the qualities of the people of divers countries, and boroughs; they were, according to antient privileges, changed for the eaſe of the people of thoſe places.

All our uſages and laws are alſo laid for the keeping and exaltation of the peace of God; and therefore it is to be known, that the people are not to be adjudged by ſimilitudes and examples not canonized, but by the love of peace, of chaſtity, of temperance, of charity, of mercy, and of good Works.

CHAP.

CHAP. I.

SECT. 2.

Of the coming of the Engliſh into this realm.

AFter that God brought down low the nobility of the Britons, who uſed more force than right, he delivered the realm to the moſt humble and ſimple of all the countries adjoining; that is to ſay, to the *Saxons*, who from the parts of *Almaine* became conquerors thereof, of which nation there were forty ſovereigns who were companions. Theſe princes called this land *(England)* which before was called Great Britain, or *Britania Major*. Theſe princes after great wars, tribulations, and troubles, ſuffered for a long time, choſe themſelves one king to reign over them, to govern God's people, and to maintain and defend their perſons and their goods in peace by rules of law. And at the beginning they made the king to ſwear, that he ſhould maintain the chriſtian faith with all his power, and govern his people by law, without having regard to the perſon of any one; and that he ſhould be obedient to ſuffer right as well as his other people ſhould be.

And afterwards this realm was divided in inheritances according to the number of

thoſe companions who then remained in the realm, into parts, by ſhires, and every one had a ſhire delivered unto him to keep and defend againſt the enemies, according to every one's eſtate; that is to ſay.

Barkſhire
Bedfordſhire
Buckinghamſhire
Cornwall
Cheſterſhire
Cumberland
Dorſet
Devonſhire
Derbyſhire
Eſſex
Everwickſhire
Yorkſhire
Norfolk
Northamptonſhire
Northumberland
Nottinghamſhire
Oxfordſhire
Rutlandſhire
Suffolk
Glouceſterſhire
Cambridgeſhire
Herefordſhire
Hertfordſhire
Huntingtonſhire
Kent
Lancaſhire
Leiceſterſhire
Lincolnſhire
London
Middleſex
Surry
Shropſhire
Somerſetſhire
Southampton
Staffordſhire
Weſtmoreland
Wiltſhire
Worceſterſhire.

And although that the king ought not to have any peer in the land; nevertheleſs becauſe that the king of his own wrong if he offend againſt any of his people, nor none of his commiſſaries can be judge and party; it was behoveful by the law that he ſhould have companions, to hear and determine of all writs, and plaints, of all wrongs, as well

of

of the king as of the queen, and her children; and of thoſe eſpecially where one could not have otherwiſe common right: theſe companions are now called counts, earls, according to the Latin *comites*; and ſo at this day are thoſe ſhires called counties, in Latin *comitatus*; and that which is without theſe counties, belongeth to the Engliſh by conqueſt.

After that time, theſe companions, after the diviſion of the realm into ſhires, divided their people which they found ſcattering about into centuries, and to every century they appointed a centiner, and according to the number of the centuries ſpake every ſhire; and to every centiner they aſſigned his part by metes and bounds, to keep and defend the ſame with his century, ſo that they were ready to run to their arms at all times when the enemies came, or other needful occaſion was. And theſe diviſions in ſome places are called hundreds, according to the number of the firſt people; and in ſome places tithings, or wapentakes, according to the Engliſh; (which is in French taking of arms); theſe diviſions they made, whereby the peace, which conſiſted in charity and true love, was kept and maintained.

CHAP. I.

SECT. 3.

Of the first constitutions made by the ancient kings.

Of king Alfred.

FOR the estate of the realm, king *Alfred* caused the earls to meet, and ordained for a perpetual usage, that twice in the year, or oftner, if need were, in time of peace they should assemble together at *London*, to speak their minds for the guiding of the people of God, how they should keep themselves from offences, should live in quiet, and should have right done them by certain usages, and found judgments.

King Edward I.

By this estate many ordinances were made by many kings, until the time of the king that now is; the which ordinances were abused, or not used by many, nor very currant, because they were not put into writing, and certainly published.

One of the ordinances was; that every one should love his creator with all his soul, and according to the points of the christian faith; and wrong, force, and every offence was forbidden.

And it was assented unto, that these things following should belong to kings,

and

and to the right of crown. *Sovereign juriſdiction.*

The ſovereign juriſdiction throughout the whole land unto the midſt of the ſea encompaſſing the whole realm, as franchiſes, treaſure found in the land, waif, eſtray; goods of felons and fugitives which ſhould remain out of any one's rights, counties, honours, hundreds, wards, goals, foreſts, chief cities; the chief ports of the ſea, great manors; theſe rights the firſt kings held, and of the reſidue of the land they did enfeoff the earls, barons, knights, ſerjeants and others, to hold of the kings by the ſervices provided, and ordained for the defence of the realm according to the articles of the ancient kings.

Alſo coroners were ordained in every county, and ſheriffs to defend the county, when the counties were diſmiſſed of their guards, and bailiffs in the places of centiners. And the ſheriffs and bailiffs cauſed the free-tenants of their bailiwics to meet at the counties and hundreds; at which juſtice was ſo done, that every one ſo judged his neighbour by ſuch judgment as a man could not elſewhere receive in the like caſes, until ſuch times as the cuſtoms of the realm were put in writing, and certainly eſtabliſhed.

And although a freeman commonly was not to ſerve without his aſſent, nevertheleſs it was aſſented unto, that free-tenants ſhould meet together in the counties, hundreds, and

the lords courts, if they were not especially exempted to do such suits, and there judged their neighbours.

And that right should be done from 15 days to 15 days before the king and his judges, and from month to month in the counties, if the largeness of the counties requireth not a longer time; and that every three weeks right should be administred in other courts; and that every free-tenant was bound to do such suit; and every free-tenant had ordinary jurisdiction: and that from day to day the right should be hastened of strangers, as in courts of Pipowder according to the law-merchant.

The turns of sheriffs and views of free pledges were ordained; and it was ordained, that none of the age of 14 years or above, was to remain in the realm above forty days, if they were not first sworn to the king by an oath of fealty, and received into a decennery.

It was ordained, that every plaintiff have a remedial writ to the sheriffs, or to the lord of the fee in this form. *Questus est nobis C. quod O. &c. Et ideo tibi (vices nostras in hac parte committentes) præcipimus quod causam illam audias & legitimo fine decidas.*

It was ordained, that every one have a remedial writ from the king's chancery, according to his plaint without difficulty, and that every one have the process from the day of his plaint without the seal of the judge, or of the party.

It

It was ordained, that coroners ſhould receive appeals of felony, and ſhould give the judgments of outlawries, and ſhould make the viſnes in the cauſes aforeſaid; and that all the next towns ſhould preſent to the coroners in the county the miſchances of the bodies of the people, and the names of the finders.

And that every country ſhould preſent felonies, miſchances, and other articles preſentable in the Eyres for offences, that the kings might ſend to ſummon them to appear againſt the coming of the kings or of the juſtices aſſigned to hold all pleas.

And for the great damages which the Commons ſuffer by amercements iſſuing out for concealments, and for fault of theſe preſentments in Eyres it was agreed unto, that theſe preſentments in Eyres ſhould be by the coroners choſen by all the Commons of the county, and ſo the coroners are as it were the Commons bailiffs as to theſe charges: nevertheleſs they are the king's miniſters, becauſe they take an oath to him. For perſonal treſpaſſes nevertheleſs, the coroners are only puniſhable, without any damage to thoſe who choſe them, unleſs they have not ſufficient wherewith to ſatisfy for their treſpaſſes.

The Exchequer was ordained in manner as followeth; and the pecuniary penalties of earldoms, and baronies certain, and alſo of all earldoms and baronies intire or diſmembred;

membred; and that thoſe amercements were affeered by the barons of the Exchequer, and that the eſtreats of the amercements be ſent into the Exchequer though they were amerced in the king's court.

It was ordained, that after a plaint of wrong be ſued, that no other have juriſdiction in the ſame place, before the firſt plaint be determined; and from thence came this clauſe in the writ of right, *Et niſi feceris vicecomes faciat.*

It was ordained, that every one of the age of fourteen years and above ſhould be ready to kill mortal offenders in their notorious ſins, or to follow them from town to town with hue and cry; and if they could not kill them, the offenders to be put in exigent, and outlawed or baniſhed.

And that none ſhould be outlawed but for a mortal offence, and in no other county but where he committed the offence.

It was ordained, that the king's courts ſhould be open to all plaints, by which they had original writs without delay, as well againſt the king or the queen, as againſt any other of the people, for every injury but in caſe of life, where the plaint held without writ.

It was ordained, that no king of this realm ſhould change his money, nor impair it, nor inhance it, nor make any other money

ney but of silver, without the assent of the lords and all the commons.

It was ordained, that felonies should be tried by appeals, and that appeals might sometimes be ended by battle, and that exigents of the offenders should continue by three county courts before the outlawry.

It was ordained, that all free-tenants should be obedient, and appear at the summons of the lords of the fee, and if one caused a man to be summoned elsewhere than in the fees of the avowants, or oftner than from court to court, that they were not bound to obey such summons, if not at the charges of the avowants of the summons.

It was ordained, that knights fees should come to the eldest son by succession of the inheritance, and that socage lands should be partable amongst the right heirs, and that none might alien but the fourth part of his inheritance without the consent of his heir, and that none might alien his lands by purchase from his heirs, if assigns were not specified in the deeds.

It was ordained, that every one might endow his wife *ad ostium ecclesiæ* or of the monastery, without the consent of his heirs; that heir females, nor widows should not marry themselves without the assent of their lords, because the lords were not bound to take the homages

from

from their enemies, or other unknown perſons; and the ſame is forbidden upon pain of forfeitures, whether their parents were conſenting thereunto or not; and that widows, in caſe they marry without the conſent of the guardians of the lands, ſhould loſe their dowries; that thoſe alſo ſhould be diſinherited or loſe their dowries that married before; widows nevertheleſs this ſhould not forfeit their inheritance for whoredom, and that the eldeſt ſon ſhould forfeit nothing to the prejudice of his anceſtor, nor his heirs, living the anceſtor whoſe heir apparent he is.

It was ordained, that the lords of fees might ſummon their tenants by the award of their peers into the lords courts or into his counties, or the hundred at all times that they detain or deny to do their ſervices in deed, or in word, *et è contra*, that is to ſay; the lords againſt the tenants, and there they ſhall be acquitted, or forfeit their allegiance with the appurtenances, by the judgment of the ſuitors, and all their tenancy; and the tortious or outragious lords ſhall loſe their fees and the ſervices, and the tenements ſhall go to the chief lords of the fee.

It was forbidden, that none be diſtrained by his moveable goods, but by their bodies, or by their fees, except in ſpecial caſes after mentioned.

It was ordained, that infants ſhould be in ward with their lands and goods, and

that

that the guardians ſhould anſwer for treſpaſſes done by their wards, and give ſatisfaction to thoſe who were damaged, except of felonies; and that their marriages ſhould be to the lords, and that they ſhould have eſcuage, relief and aids of their tenants which they held of the lords, as to make the heir of the lord knight, and to marry their eldeſt daughters, and that the heirs males ſhould do homage to their lords, and the females ſhould ſwear fealty; and that the inheritance ſhould deſcend to all the children by warrant of right of the poſſeſſion, and that the male ſhould bar the female, and the next the more remote by warrant of right of propriety.

It was ordained, that offenders guilty of death ſhould not be ſuffered to remain amongſt the guiltleſs, and that the king ſhould have the value of the lands and the rent for one year, and the waſte of felons lands; and alſo that he ſhould have all *deodand*; and that the goods and chattels of uſurers ſhould remain as eſcheats to the lords of the fees.

Eſſoins were ordained in mixt and real actions, and not in perſonal actions, as after is ſaid.

It was forbidden, that any one ſhould alien the profits of his lands, or his rents to any one out of the realm; and it was alſo forbidden, that none ſold wine in the kingdom but by ton or pipe.

It

It was forbid, that no money was to be carried out of the realm; and that none ſhould carry wool out of the kingdom, nor ſhould kill lamb, or calf which might live, nor ox which was not gelt.

It was forbidden, that no biſhop do ordain laymen to the order of clerks above the number which are ſufficient to ſerve the churches, whereby the king's juriſdiction be deſtroyed: it was ordained, that the poor ſhould be ſuſtained by parſons, rectors of the church, and by the pariſhioners, ſo that none of them die for want of ſuſtenance.

It was ordained, that fairs and markets ſhould be in places, and that the buyers of corn and cattle ſhould pay toll to the lords bailiffs of markets or fairs; that is to ſay, a falſe penny of ſix ſhillings of good, and of good, leſs, and of more, more; ſo that no toll exceed a penny for one manner of merchandize: and this toll was given to teſtify the contracts, for that every private contract was forbidden.

It was ordained, that no action was receivable to judgment, if there was not a preſent proof by witneſſes or other things; and that none was bound to anſwer to any ſuit, nor to appear to any action in the king's courts before the king's juſtices, before they found ſureties to anſwer damages and the coſts of ſuit, if damages lay in the caſe, except in four offences, diſſeiſins, certification of diſſeiſins, attaints, re-diſſeiſins and other caſes. To which ordinance

king *Henry* the firſt put this mitigation in favour of poor plaintiffs, that thoſe who had not ſufficient ſureties preſent, ſhould make ſatisfaction according to their ability, according to a reaſonable taxation; and in the ſame manner in ſummons's, and in hatred of perjury attaints were ordained in all actions.

It was forbidden, that no merchant alien ſhould repair into *England* but at four fairs, and that none ſuch ſhould remain in the realm above forty days.

Of the curteſy of king *Henry* the firſt, it was granted, that all thoſe who ſurvived their wives who were with child by them, ſhould hold their wives inheritance for ever.

Many other ordinances were made by them, and ſince have been made in aid of the peace, according as afterwards ſhall be ſaid.

CHAP. I.

SECT. 4.

Of Offences, and the diviſion of them.

THE diviſion of offences is according to that which appeareth by the puniſhment. Mortal, or venial.

The mortal offences are theſe:

Of { *Majeſty*, *Burning*, *Burglary*, *Falſifying*, *Larcency*, *Homicide*, *Treaſon*, }

Of

Of the offence of majesty.

The crime of majesty is an horrible offence done against the king; and that is either against the king of heaven, or an earthly king.

Against the king of heaven in three manners. *Heresy*, *venery*, *sodomy*.

Against the earthly king in 3 manners.

1. By these who kill the king, or compass so to do.

2. By those who disinherit the king of his realm, by bringing in an army, or compass so to do.

3. By those adulterers who ravish the king's wife, the king's lawful eldest daughter before she be married, being in the king's custody; or the nurse, or the king's aunt, heir to the king.

Heresy is an evil and false belief, arising out of error of the true christian faith; under this offence is witchcraft or divination, which are members of heresy; and in case less notorious they come by presumptions of ill works, which are by evil art, arising from an ill belief; and sometimes of a firmer belief they do wonders, and sometimes they come by open confessions of error.

So heresy is an art to divine.

Divination properly is taken in the ill sense, as prophecy is taken in a good sense.

Divination used to be in many kinds, whereof one manner of divination was through an ill belief, by the which the witch caused *Samuel* to rise, who warned *Saul* of his death.

Another kind is piromancy, which is done by fire.

Another is areomancy, which uſed to be done by ſigns in the air.

Another is Hydromancy, which is done by ſigns in the water.

Another is geomancy, which is done by ſigns in the land.

Another is necromancy, which is done by death, by making the dead to ſpeak.

Another is ſouth-ſaying, which was done by ſigns in the entrails and bowels of birds.

On the other part, ſome diviners uſed to put truſt in lots, ſome in ſongs, ſome in verſes of pſalms, ſome in carrying goſpel and charms about their necks, ſome in enchantments and ſpells, ſome in ſigns in the entrails of beaſts, and in the palms of the hands.

Some were called mathematicians, and *magi*, and divined by the ſtars.

Others were called *Arioles*, who took their anſwers from the devil by evil men.

Others ſouth-ſayers, who numbered nights and days and hours, whereby they ordered their buſineſs. There were many other kinds, all which manner of diviners are to be, by the word of God himſelf, and authority of the church to be excommunicated, and forbidden as much as mahometaniſm, and things againſt the true faith. And this St. *Auguſtine* proves by many reaſons; and hence it is, that they who travel to witches or diviners to know things to

come give that to the creatures which belongeth to God alone. Wherefore these wicked doers are to be removed from the society of God's holy people, so that no good christian be taken with their art, nor partner in their sins.

CHAP. I.

SECT. 5.

THE crime of majesty, or offence against the king is neighbour to many other offences; for all those who commit periury, whereby every one lieth against the king falleth into this offence. As the king's ministers who are sworn to do justice, and forswear themselves in any thing, so those who disseise the king of any of his franchises, or of any manner of right which belongeth to the crown by occupations, or purprestures, or in any other manner, although it be no mortal offence.

Into perjury fall all those subjects of the king who appropriate to themselves jurisdictions over the king, and of themselves make judges, sheriffs, coroners, and other officers to have conusance of law.

Into perjury against the king fall all the king's subjects who appropriate to themselves jurisdictions of counties, honours, sockness, *retorna brevium*, or any thing which may fall to his inheritance; as wards, escheats,

eſcheats, reliefs, ſuits, ſervices, or marriages, fairs, markets, enfangthef, outfangthef, waif, eſtray, treaſure found in the ground, warren in their own lands, or in the lands of others, toll, pavage, pontage, chiminage, murage, carriage, or other the like cuſtoms.

Into perjury againſt the king fall thoſe the king's ſubjects who take abjurations of felons and fugitives, and are no coroners, nor warranted by the king ſo to do; and thoſe who put out any indicted or appealed of any crime out of the roll of the coroner; and thoſe coroners who oftener than once receive appeals of approvers, or procure that a man who is innocent be appealed by an approver. And thoſe who have detained appeals of approvers of foreign acts, or whereby any foreigner is appealed. And thoſe coroners who wittingly ſuffer the goods and chattels of fugitives to be leſs valued than they ought to be of right; or conceal them in part or in all, or detain them to their own uſes, to the damage of the king; or deliver them elſewhere than to the towns, or for lucre have taken more than they ſhould in damage of the towns, or ſuffer their ſervants to have the garments, or other things which are to be ſeized for the king's uſe, or the garments of the dead, or delay to do their office through covetouſneſs.

Into perjury againſt the king fall thoſe officers who pardon fines and amercements

which belong to the king, or any manner of penalty either corporal or pecuniary, without ſpecial warrant. And thoſe officers who by ſummons and adjournments make the people to travel in vain, as to gaol-deliveries, aſſizes, enqueſts, or otherwiſe; and all thoſe ſubjects who bear arms againſt the king, or run away from his lawful army or battle; and thoſe miniſters who unlawfully ſtop, or counſel the people that they go not into war with the king, or that they are not bound to go, where they have reaſonable ſummons; and that the people be not made knights, but according to the ſtatutes of the realm.

Into perjury againſt the king fall all thoſe the kings ſubjects, who hold plea of Withernam, and have not return of writs, or hold pleas of diſtreſſes, or of any other thing which belongeth to the king's juriſdiction only, without the king's ſpecial commiſſion, or hold plea in caſe of life, of impriſonment, of blood-ſhed, of falſe judgments, or of any thing diſavowable of right without the king's writ, or commiſſion.

And all thoſe the king's miniſters who maintain falſe actions, falſe appeals, or falſe defences.

Into perjury againſt the king fall thoſe miniſters who deny to plaintiffs original writs poſſeſſory, attaints, or of formedon; or otherwiſe do delay their rights, and thoſe who wrongfully do delay or diſturb right judg-

judgments, and thoſe who wrongfully favour wrongful judgments; and all thoſe who uſe their privileges or liberties wrongfully, or too largely, contrary to their knowledge.

Into perjury againſt the king fall thoſe miniſters, who receive fines to other uſes than to the king's uſe for treaſure trove, for wreck, waif, eſtray, aliens, for bloodſhed, or impriſonment, withernam, re-diſſeiſin, or diſſeiſin, or forſwear themſelves to reſiſt, that a lawful judgment have not execution; for uſury, purpreſture upon the king, or for any other thing whereof the conuſance doth belong to the king.

And thoſe receivers who pay not the king's debts as they ought to do, and are enjoined, or render to him part for ſatisfaction of the whole, and do not pay the king the reſt.

Into perjury againſt the king fall thoſe who charge the king wrongfully. And thoſe who ſpend the king's quarries, timber or other things, otherwiſe than in the king's ſervice, without ſufficient warrant.

Into perjury againſt the king fall eſcheators, who make waſte of the king's wards, or in his fees, or unlawfully take veniſon, fiſh, or other goods; and by their authority ſeiſe the goods of the dead, and for gain releaſe them; or endow widows to the king's loſs; or make hurtful extents for the king, accounting for leſs than the very

value to the king, or willingly ſuffer poſſeſſions to remain in mortmain which ought to be ſeized into the king's hands, and whereof the king ought to have the profit, or which receive more of their bailiwics than they anſwer to the king, or who wittingly ſuffer feoffments of land, or of advowſons of churches prejudicial to the king, or who ſuffer them to alien wards or marriages to the king's prejudice, or ſuffer the ages of infants to be proved in damage, or to the king's prejudice take fines for wards or marriages without writ, or deceive any one by colour of their office, or levy money upon any upon his own proper amercement.

Into perjury againſt the king fall ſheriffs, who too high charge the people, by a ſurcharge upon the people of horſes, or of dogs, and who levy fines or amercements for eſcapes of priſoners, or for any thing againſt law before the eſcapes be adjudged by the juſtices in Eyre, and who increaſe or diminiſh fines or amercements beyond the wills of the afferors or jurors, and thoſe officers who conceal people deliverable to priſon and do not bring them to judgment.

Into perjury fall all thoſe officers who are reproveable for the ſufferance, negligence, or conſent to the alienation of the franchiſes or of the right of the king wrongfully, or to the occupying, or withholding of them.

And all thoſe who elſewhere change old

money which is forbidden for new, than at the king's change.

CHAP. I.

SECT. 6.

Of falsifying.

FAlsifying is done in two manners; by falsifying the king's seal, and his money.

His seal may be falsified in many manners. It is always falsified when a writ is sealed, whereof the ingrossing, and the matter, or the form is not justifiable by the king, nor by the law, nor by the lawful customs of the realm, which is not to be intended of every writ abatable.

It is falsified if a man seal therewith after that the chancellor, or other keeper thereof hath lost his warrant, either by death, or in any other manner.

It is falsified when a writ, or a patent passeth against the king's forbidding. It is falsified by those who seal by ill art, or by warrants not justifiable, and it is falsified by those who seal and have not authority to seal.

Of falsifying the money. The money was ordained round and quarterable, and use so to be made that the outward circle was apparent through the whole, otherwise it was not to be received; and that the 1 *l.* was of 12 ounces of fine silver, and it was assented

unto that the king ſhould have 6 *d.* for the ſealing of every writ, and for the coinage of every pound of money 12 *d.* and no more of monies current in the realm.

The money is falſified by him who by evil covetouſneſs maketh it not juſtifiable; and it is falſified by thoſe who make it, and have not authority or warrant ſo to do; it is alſo falſified by thoſe who for evil gain put more alloy in it then of right there ought to be. And it is falſified by all thoſe who make it without the king's coinage. And it is alſo falſified by all thoſe who by ill art counterfeit it, and by thoſe who clip or waſh it for ill gain.

CHAP. I.

SECT. 7.

Of treaſon.

TReaſon is not done but betwixt allies, who may be by blood, affinity and homage, oath and ſervice. By blood, as if one of parentage do any thing to another of his blood which is the cauſe of his death, or diſinheriſon, or to loſs of homage; for the quality of treaſon is the taking away of life or member, or decreaſe of earthly honour, or the increaſe of villainous ſhame. And in the ſame manner is this offence betwixt affines, as betwixt ſiſters, ſons-in-law and parents; for as coſinage is a line of divers parceners deſcending

deſcending of the ſame ſtock, and drawn from carnal copulation; in like manner affinity is a nearneſs of perſons deſcending from carnal copulation where there is no blood; and as this offence is done betwixt affines and couſins, ſo it is alſo betwixt allies.

Alliance is ſometimes by { *Service*, *Homage*, and *oaths*. }

Which happeneth ſometimes by reaſon of fealty iſſuing from the ſervice of the fee; ſometimes iſſuing from the oath of ſervice of the body, and as one of the allies, parents or affines commit this offence againſt the other, in the ſame manner may they do againſt them.

By ſervices; as if one who I have rewarded, to do me fealty, and be ſeiſed in demeſne of a manor or other gift, or ſervice, or courteſy, falſify my ſeal, or raviſh my daughter or my wife, or the nurſe, or the aunt of my heir, or doth any thing which is the cauſe of my death by a felonious compaſſing the ſame, or to the great diſhonour or damage of my body, or of my goods, or diſcovereth my counſel, or my confeſſion, which he is charged to conceal.

And by reward is meant, fee, poſſeſſion, robe, church, rent, or other gift, and meat and drink during the ſervice.

And as ſuch a one may commit treaſon againſt me, who taketh from me ſo much that he is ſeized, in the ſame manner I may

offend

offend againſt him; by ſuch action or demand he ſhall have againſt me, as I may have againſt him.

CHAP. I.

SECT. 8.

Of burners.

BURNERS are thoſe who burn a city, town, houſe, men, beaſts, or other chattels, felonioufly, in time of peace for hatred or revenge. And if any one put a man into the fire, whereby he is burnt or blemiſhed by the fire, although he be not killed with the fire, nevertheleſs it is an offence for which he ſhall die. Under this offence ſometimes fall thoſe who threaten burning.

CHAP. I.

SECT. 9.

Of Man-ſlaughter.

MAn-ſlaughter is the killing of a man by a man; for if it be done by a beaſt, or by miſchance, it is not man-ſlaughter.

This offence is two ways; either by the tongue, or by the act.

By the tongue three ways; by counſel, commandment, or denial.

By

By counſel; as he who counſelleth another to kill, and ſo alſo it is by commandment.

By denial; as he who denieth ſuſtenance to a man.

By act many ways; ſometimes by ſtriking, by poiſoning, by neceſſity, by will.

By ſtriking; as it afterward appeareth in the appeals.

By poiſoning or venoming; as by ſecret felony, and feigned friendſhip, giving poiſon to another to eat, or poiſoneth or envenomed any thing, whereby a man is preſently or in time killed. Or by impriſonment; as he who keepeth the body of a man in priſon by colour of law, till he dieth. By chance; as by caſting or drawing of a veſſel, or other thing, and ſome one is killed by miſchance, or by the falling of a tree, and other the like caſes. But you muſt diſtinguiſh where the killing is juſtifiable by law, for there it is no offence; and when he doth not that which he ought to do, and the party uſeth all the diligence which he may, crying out, and defending himſelf, for then he doth not greatly offend; but he who doth not ſo do he offendeth mortally.

By neceſſity; wherein you ought to diſtinguiſh whether the neceſſity be avoidable or not, and if it be avoidable, it is a mortal offence.

By will; and that may be either of himſelf, or of ſome other perſon.

Of

Of himſelf; as in caſe, when people hang themſelves or hurt themſelves, or otherwiſe kill themſelves of their own felony.

Of others; as by beating, famine, or other puniſhment; in like caſes, all are man-ſlayers. Alſo this offence is done willingly; as by thoſe who pain men ſo much as ought not, or not ſo much as they ought, he offendeth mortally. But it may be alledged; that by reaſon of the pain the dead doth falſly confeſs the felony; and ſometimes by the reward of the coroners or juſtices are deſtroyed; and as it is of thoſe who caſt and leave children and others who cannot go in deſerts, or in ſuch places, and return not to them, though they do not die in the deſerts, God ſuccouring them. And alſo falſe jurors, and witneſſes are men-ſlayers, and thoſe who appeal others, or ſcandalouſly indict them, or in other manner falſly accuſe them.

And alſo they fall under this offence who impriſon the people in ſuch places, or put them to ſuch puniſhment, where it may be found by enqueſt, that by thoſe means, places or puniſhments they came ſooner to their deaths.

Three ways was God himſelf killed; for tongues killed him indeed, with the other who crucified him, or procured him ſo to be; by the tongue *Pilate* killed him, who commanded him to be killed; by will, the falſe witneſſes, and all thoſe who conſented thereunto

thereunto killed him; and hence it is that the evangeliſts differ of the hour of his death, in ſetting forth his paſſions.

This offence doth contain many branches:

viz. { *Impriſonment,*
Mayhem,
Wounding,
Battery,
Falſe witneſſes.

Impriſonment is the wrongful detaining of a man's body, and that may be in two manners; either in a common priſon of the king, or in a private priſon which is forbidden.

In a common priſon none ought to be put, if he be not attainted of an offence which requireth death; or eſpecially appealed or indicted, and by judgment of a falſe and wrongful impriſonment.

A private priſon is 1. ſometimes rightful and juſtifiable; 2. wrongful.

The ſame is lawful and juſtifiable, when a man who is bailable is taken and put in cuſtody, till he hath found bail to do that which he ought.

People are in cuſtody in divers manners; in one manner by the warrant of law, as it is of infants within age, women in the cuſtody of their huſbands, men of religion in the cuſtody of the abbots, or other ſovereigns of their houſes, and villains in the cuſtody of their lords.

In

In another manner people are in cuſtody by common aſſent; as it is of ideots, of people waſters of their eſtates, of mad-men, and of thoſe who are drawn to follow infamous though pardonable offences, who are to be in cuſtody in ſuch caſes.

Into the offence of manſlaughter fall all thoſe by whom a man dieth in priſon; and that may be either by the judge, who delayeth to do juſtice, or by dureſs of the keepers, or by other unjuſtifiable occaſion.

Into this offence fall all thoſe through whoſe default people die, being forſaken of thoſe who are bound to ſuſtain them.

And thoſe who kill a man impriſoned, by a ſurcharge of pain, in caſe when any is adjudged to penance.

And all thoſe who unjuſtly adjudge a man to death; and thoſe who aſſent thereunto, and falſe witneſſes who falſly teſtify a mortal offence againſt an innocent man.

Into this offence fall all jurors, and falſe phyſicians, and maintainers of killing, and thoſe who beat or wound a man, ſo that he is far from living, and nearer to his death.

Mayhem is the want of member, or the enfeebling of it by breaking, or cutting the bones of a man, whereby he is leſs able to combat.

And *Turgis* ſaith, that the loſs of the fore-teeth is mayhem, and of the turning of

the

the mouth, and of the little finger, and of the right joint, and the taking away the toes of the feet is mayhem, and the more reaſon where more loſs appeareth.

And *Sennall* ſaid, that the loſs of the eyes is mayhem, if nature have not taken them away; but the loſs of the middle teeth, or of the noſe, or the ears is not mayhem, although the body is thereby reviled or diſhonoured.

And *Billing* ſaith, that raſure by turning the bones of the head, or of the ſcull of the head backwards is mayhem, and alſo of other bones.

A wound is cauſe of death made by cutting of the hand, or the arm feloniouſly, which is ſhewed by the length, breadth or depth; for the cutting of a ſtone, or of a ſtaff ſeldom becometh a wounding but a bruiſing.

Wounds—

CHAP. I.

SECT. 10.

Of Larcenies.

LArceny is the treacherouſly taking away from another moveables corporeal, againſt the will of him to whom they do belong, by evil getting of the poſſeſſion, or the uſe of them. It is ſaid a taking, for bailing, or delivery is not in the caſe; it is ſaid of moveables corporeal, becauſe of goods not moveables, or not corporeal, as of land, rent,

advow-

advowſons of churches there can be no lar-ceny. It is ſaid treacherouſly, becauſe that if the taker of them away conceive the goods to be his own, and that he may well take them, in ſuch caſe it is no offence. Nor in caſe where one conceives that it pleaſes the owner of the goods that he take them, but thereof there ought to be apparent preſumption and evidence. There be two parts of larceny.

One which is done openly in the day by robbery. The other which is done in the night, or in the twilight.

Robbery is done ſometimes

By
1. *Thieves.*
2. *Tortious diſtreſſes of bailiffs and others, who wrongfully extort from the people.*
3. *Extruders and diſſeiſors who with force openly take the goods of others as before is ſaid.*
4. *By others, who run away with other mens wives, or wards, and their goods.*

Into this offence fall all ſuch who take the goods of others by authority of the king, or of other great lords, without the conſent of thoſe whoſe goods they are.

Larceny is committed ſometimes by open thieves, ſometimes by treacherous; as it is in divers kinds of merchandizes, and as it is of labourers who ſteal their labours, and as it is of bailiffs, receivers, and adminiſtrators of others goods, who ſteal them in not giving their accompts.

Into

Into this offence fall all thoſe who ſteal purſes or cloak-bags, or do any other larceny, by increaſe or covetouſneſs of themſelves, and all their favourers.

Into this offence fall all thoſe who ſuffer thieves to paſs when they may arreſt them; thoſe alſo who may take or hinder them, or warn them of malice and do not; and thoſe who conceal them for love of thief-boot; or other reward, or wittingly receive their larceny, or their perſons.

Into this offence fall all thoſe who ſteal by falſe meaſures, and falſe weights, or in any other manner of treachery by colour of merchandize, and thoſe who wittingly ſuffer them where they may hinder them.

Into this offence fall thoſe who wrongfully amerce the people with outragious amercements, or outragiouſly affeer amercements, or wrongfully condemn their neighbours either in damages or penalties; and thoſe who wrongfully detain treaſure found, wreck, waif, or eſtray which belongeth to the king; and thoſe who otherwiſe find them, and do not reſtore them when they may, and know to whom they do belong.

Into this offence fall all thoſe who take wrongful or outragious toll in markets, cities, boroughs, towns, mills or elſewhere; and thoſe who take pavage, murage, chiminage, carriage, or other manner of cuſtoms more than they ought to do.

Into this offence fall thoſe bailiffs who do enquire in turns and views of frank-pledges

of more articles than perſonal offences, and of wrongs done to the king and his crown, and of wrongs done to the common people, and thoſe who by extortion take monies or fines for beaupleader, or for which the jurors are not charged; and thoſe who amerce any of their own heads without reaſonable affeerment of the people ſworn thereunto.

Into this offence fall thoſe who unjuſtly diſtrain, and thoſe who ſell diſtreſſes for the king's debt within the 15 days.

Into this offence fall all thoſe officers of the Exchequer, and others who forbid to make acquittances under the Exchequer ſeal, to every one for ſo much as he hath paid; and who oftner than once cauſe a debt to be levied; who take rewards, whereby the towns do not in due manner according to the conſtitution of Wincheſter; or who ſuffer that the people be not furniſhed with arms according to common appointment.

Into this offence fall all ſtealers of other's veniſon, and of fiſh in ponds, and of conies, hares, pheaſants, partridges, being in warrens, and other fowl, doves and ſwans, of the Eyeries of all manner of birds.

Into this offence fall all the ſheriffs, bailiffs, and other the king's officers, who unjuſtifiably by extortions take money of the people, as for defaults unjuſtifiable, or for ſheaves or other cuſtom unallowable, or for plea whereof the judge hath no juriſdiction; and thoſe who take money to put men out of panels of juries, and put others in.

Into

Into this offence fall all thoſe who take lands, tenements, horſes, or other things, and uſe them beyond the appointed time for the loan of them; and thoſe who by the authority of their bailiffs make unjuſtifiable collections for monies, or other proviſions, or corn in ſheaves for ſcottals, or other feſtivals, or do to the people other unlawful grievance in the like caſe. And thoſe ſworn officers who cauſe fines or amercements, or other manner of duty to be oftentimes levied upon one man, without making reſtitution; and thoſe officers who take of other than of the king, or of their lords, to do their office; and thoſe who oftner than twice in the year hold ſheriffs turns, or who oftner than once in the year hold views of frank-pledges in one court; and thoſe who by unjuſtifiable articles amerce the people; and thoſe who at mills or markets take outragious toll, and thoſe who amerce the people by preſentments not made by the whole decennary, or by others than of freemen.

Into this offence fall they who do any thing upon another's inheritance by evil covetouſneſs, or for hatred.

Into this offence fall counters who take outragious ſalary, or not deſerved, or who are attainted of ill defence, or of other diſcontinuance, and thoſe who deny their ſeals in judgment, and thoſe who make contracts which are forbidden.

Into this offence fall uſurers, who lend money or other things, through covetouſneſs to take the forfeiture. And thoſe who rob, or ſteal the marriages of others, or run away with other's wives, or villains with the goods of others.

And all fore-ſtallers, by whom victuals or cattle are made dear.

They are foreſtallers who within any town or franchiſe buy to engroſs, and unlawfully to ſell more dear; and thoſe butchers who ſell unwholeſome fleſh for wholſome; and thoſe fiſhmongers who buy and ſell againſt the eſtabliſhed law; and all thoſe of what myſteries ſoever they be, who do deceitfully in their trade or myſteries.

CHAP. I.

SECT. II.

Of hamſockne, or burglary.

BUrglary by an ancient ordinance is a mortal offence; for the law is, that every one be at peace in his own houſe.

This offence is not done only by breaking of a houſe, but is alſo done by a felonious aſſault of enemies in time of peace, upon thoſe who are in their houſes with intent to repoſe there in peace; whether the aſſault be to kill, or to rob, or to beat thoſe who are in reſt within their houſes. And although it be that theſe offenders do not accompliſh their purpoſe, if nevertheleſs they

they make any breaking by their aſſault of the doors, windows, or walks, to enter feloniouſly, they are guilty of this crime.

Into this offence fall all thoſe who feloniouſly force their entry into another's houſe, and therein do any violence againſt the peace although they do not break the houſe, and that as well in the day time as the night; and thoſe who diſſeiſe the people in ſuch caſe, or caſt them out of their houſes, and out of their peaceable poſſeſſions wrongfully.

CHAP. I.

SECT. 12.

RAPE is done two ways, that is to ſay, of things, and of women. This offence is here put becauſe king *E.* 1. by his ſtatute made it mortal, which is more grounded upon the will, than upon diſcretion; for one ſort is whoredom, another fornication, another adultery, another inceſt, and another rape; but to ſpeak properly we are to diſtinguiſh of the offences whereof the firſt offence is greater than the other.

Whoredom is the deflouring of a married woman feloniouſly.

Fornication is to raviſh women not married.

Adultery is to raviſh another's wife.

Inceſt is to raviſh couſins, parents, or affines.

Rape is properly the taking away of a woman for the desire of marriage.

Rape nevertheless according to the meaning of the statute is taken for one proper word. given for every enforcement of a woman of what condition soever she be.

CHAP. I.

SECT. 13.

Of the office of the coroners.

TO coroners anciently were enjoined the keeping of the pleas of the crown, which extend now but to felonies and adventures.

There are two kinds of coroners { *general* and *special.*

To the office of general coroners it belongeth to receive the appeals of all the county, of felonies done within the year; to award the exigents of contempts, and to pronounce the judgments of outlawries; and more, to enquire in what pledge they were, or decennary, or of whom mainprized, and in whose ward.

Special coroners are coroners of liberties, and of privileged places.

To the office of the one and the other it doth belong, to view the carcases of the dead by felony, or by mischance; or to see the burnings and the wounds, and the other felonies,

nies, that is to ſay, every one in his bailiwic; and to ſee treaſure trove and wrecks of the ſea, and to take the acknowledgments of felony, and to give the abjuration to flyers to ſanctuary, and to take the enqueſts of felonies happening within their bailiwics.

As to the view of the carcaſe of the body of a man, it is his office that ſo ſoon as he ſhall be certified thereof, to ſend to the hundred of the place to ſummon ſufficient able men of the next towns, that at a ſhort day certainly named, they be before him at ſuch a place, all which done the carcaſe is to be viewed; and if he find it there buried, that it be taken up, and to the coroner it belongeth to record the names of them who buried him; and if it hath been decreaſed or endamaged by ill keeping, or lain ſo long that it cannot be judged how it came by its death, that the ſame alſo be recorded, that this negligence be puniſhed at the coming of the king, or his juſtices in Eyre into thoſe parts; and if the coroner, with the advice of the people preſent be able to judge of the death, then they are to preſent the manner of his killing, whether he died of another's felony, or of his own, or by miſchance; and if of blows, whether of a ſtaff, or a ſtone, or a weapon; and the coroner is to record in his book the names of thoſe who were ſummoned and appeared not, that the ſame offences of diſobedience remain not unpuniſhed, whereby the coroner could not at that time do his office for want of jurors.

In thoſe enqueſts lie no exceptions, or challenges to the perſons of the jurors; but he ought to make his panels of the diſcreeteſt, and of the ableſt and beſt of them, and to ſee that the carcaſe be buried.

The panels are to be of decinies; for coroners at theſe enqueſts, ſheriffs at theirs turns, bailiffs at their views of frank-pledges, eſcheators and the king's officers of his foreſts, have power by authority of their office to ſend for the people, which none other have without the king's writ; and that is for the keeping of the peace, and for the right of the king, and for the common people.

The articles are theſe.

YOU ſhall by your oaths declare of the death of this man, whether he died of felony, or by miſchance; and if of felony, whether of his own, or of another's; and if by miſchance, whether by the act of God or of man; and if of famine, whether of poverty, or of common peſtilence, and from whence he came, and who he was; and if he died of another's felony, who were principals, and who acceſſaries, and if hue and cry were duly made or not; and whether the men fled according to law or not, and who threatened him of his life or members, and who were ſureties for the peace, or whether he died of long impriſonment, or of pain, and by whom he was farther from life, and nearer to his death; and ſo of all prevailing circumſtances that can come by preſumptions.

And in case where he died by hurt, or fall, or other chance by the act of God, so that he had not power to speak before his death; then you shall tell the names of the finders, and of his next neighbours, and who were his parents, and if he were killed there or elsewhere, and if elsewhere, by whom, and how he was thence brought, and the value and kind of the deodand, and to whose hands it came; for in case a man dieth by a fall, in such case according to Randulf de Glanvil, *it is ordained, whatsoever is cause of his death is deodand; as it is for whatsoever moveth in the thing whereof he fell, as horse, cart, mill-stone; also vessels are sometimes deodands but not in the sea; the sums upon the horses, the goods lying in ships, mills, carts and houses, are not accounted for deodands.*

And in case of another's felony, then the jurors declare who were the felons, in what pledge, dozein, ward or mainprize they were, and from whence they came, and where they returned.

And if he was killed by false judgment, then that the jury declare who were the judges, who the officers to form the judgment, and who accessaries, and if of false witnesses, who were they, and the jurors.

And if he died of his own felony, then that they tell the manner, and the value of his goods, and the names of his parents, and the finders, and of the neighbours, and the value of the waste.

There

There are nine manner of acceſſaries.

1 *Thoſe who command.* 2 *Thoſe who conceal.* 3 *Thoſe who allow and conſent.* 4 *Thoſe who ſee it.* 5 *Thoſe who help.* 6 *Thoſe who be partners in the gain.* 7 *Thoſe who knew thereof, and did not interrupt or hinder it by forbidding.* 8 *Thoſe who knowingly receive.* 9 *Thoſe who are in the force.*

Of miſadventures in turnaments, in courts and liſts, king *Henry* II. ordained, that becauſe at ſuch duels happen many miſchances, That each of them take an oath that he beareth no deadly hatred againſt the other, but only that he endeavoureth with him in love to try his ſtrength in thoſe common places of liſts and duels, that he might the better know how to defend himſelf againſt his enemies; and therefore ſuch miſchances are not ſuppoſed felony, nor the coroners have not to do with ſuch miſchances which happen in ſuch common meetings, where there is no intent to commit any felony.

Coroners alſo ought to make their views of ſodomies, and of monſtrous births of children, who have nothing of humanity, or who have more of other creatures than of man; and coroners were to bury them. But the holy faith doth more and more now daily confirm men, that they abſtain to commit theſe horrible ſins which they uſed to do. Alſo they uſed to enquire of burnings, and who put to the fire, and how; and whether it were by felony or miſchance; and if of

felony,

felony, of whoſe felony, and who were the principal, and who the acceſſaries, and who were the threateners thereof.

It belongeth to them at their views to enquire after treaſure privately hidden, and found in the ground, and how the treaſure was found, and by whom, and how much there was; and if it be all ſeiſed upon, or all carried away, and who carried it away, and how much; and who were the finders of it, and the next neighbours.

At their views of wrecks, they ought to enquire whether the wreck came to land, what be the things, and how much, and the value of them diſtinctly by parcels; and if a man, a beaſt, cat, or other living thing came with it or not, and that by divident it be delivered to the next town, that they may anſwer the lord if he come to claim it, and receive it within the year.

At his view of wounds, it behoveth him that he view the wound, and make a record of the length, breadth, and depth of it, in aid of the wounded if he complain, in caſe the wound be healed, the coroner of the county may help him by the record. Alſo it belongeth to him to view burglaries, and to enquire of the names of the felons, and what they have to live of, and from whence they came, or whether they returned; and of the menacors, and of other circumſtances.

The jurors are ſevered into dozens, ſo that one dozen ſpeak not with another, but that every jury anſwer by itſelf, and review

the

the preſentments and the verdict, ſo are they chargeable, to accuſe the conſpirators who procure to ſave any offendant, or to indict an innocent in ſuch enqueſts.

All the verdicts before the coroners as well of acceſſaries as of the principal are at the commandment of the coroners receiveable by the ſheriffs, and the principal and acceſſaries are to be taken and delivered to mainpriſors, and in the preſence of them and of the ſheriffs their goods moveables and not moveables are to be ſeized into the king's hands, and by a reaſonable extent and dividend, the moveables are deliverable for the finding of the priſoners, and for their needful and reaſonable ſuſtenance, and the king to be anſwered the reſidue, ſaving the right both to the principal if they be acquitted, and to the acceſſaries by mainprize.

And if any one fly, or make reſiſtance, and will not anſwer the law, it is lawful for every one to kill him, if he cannot otherwiſe apprehend him.

And *Bermund* awarded, that all goods of thoſe that fled ſhould remain forfeit to the king, ſaving to every one his right, although that afterwards he yield himſelf to the peace.

And *Iſelgram* ſaid, that he is no flyer who appeareth in judgment before he be outlawed.

If any one fly to ſanctuary, and there demand protection, we are to diſtinguiſh; for if he be a common thief, robber, murderer,

night-

night-walker, and be known for ſuch a one, and diſcovered by the people, and of his pledges and deziners; or if any one be convict for debt, or other offence upon his own confeſſion, and hath forjered the realm, or hath been exiled, baniſhed, outlawed or waived; or if any one have offended in ſanctuary, or joined upon this hope to be defended in ſanctuary, they may take him out thence without any prejudice to the franchiſe or ſanctuary. But in the right of offenders, who by miſchance fall into an offence mortal out of ſanctuary, and for true repentance run to monaſteries, and commonly confeſs themſelves ſorrowful, and repent, ſuch offenders being of good fame, if they require tuition of the church, king *Hen.* II. at *Clarendon* granted unto them, that they ſhould be defended by the church for the ſpace of forty days; and ordained that the towns ſhould defend ſuch flyers for the whole forty days, and ſend them to the coroner at the coroners view. It is in the election of the offender to yield to the law, or to acknowledge his offence to the coroners, and to the people, and to waive the law; and if he yield himſelf to be tried by law, he is to be ſent to the gaol, and to wait for either acquittal or condemnation; and if he confeſs a mortal offence, and deſire to depart the realm, without deſiring the tuition of the church, he is to go from the end of the ſanctuary ungirt in pure ſack-cloth, and there

ſwear

ſwear that he will keep the ſtrait way to ſuch a port, or ſuch a paſſage which he hath choſen, and will ſtay in no parts two nights together, until that for this mortal offence, which he hath confeſſed in the hearing of the people, he hath avoided the realm, never to return during the king's life without leave, ſo God him help, and the holy evangeliſts; and afterwards let him take the ſign of the croſs and carry the ſame; and the ſame is as much as if he were in the protection of the church.

And if any one remain in ſanctuary above the forty days, by ſo doing he is barred of the grant of abjuration if the fault be in him, after which time it is not lawful for any one to give him victuals.

And although ſuch be out of the peace, and the protection of the king, yet none ought to diſhearten them, all one as if they were in the protection of the church, if they be not found out of the highway, or wilfully break their oaths, or do other miſchief in the highway.

If he who is killed be unknown, in ſuch caſe the coroners ought to ſhew the murdered cloaths, according to the ſtatute of king *Kanute*, who ordained for the ſafeguard of his *Danes* whom he left in *England*; that if a man unknown were killed, that the whole hundred ſhould be amerced to the king by the judgment of murder. Four things excuſe the hundred from the judgment of murder.

1 If the felon be known who killed him, for if the felon be known, then may he be attainted of the felony.

2 Another, if the felon be apprehended, or if he fly to a monaſtery.

3 If the killing come not by felony, but by miſchance.

4 The fourth in caſe where a man is a felon of himſelf, and becauſe there could be no murder of a man unknown, it belongeth to the coroners to enquire in thoſe felonies of what kindred or lineage thoſe that were killed were, ſo that one may know by their parents whether they were of the *Engliſh* nation or not; for if no man could name their parents, it was great preſumption that they were aliens. And thence it is that one calleth that parentage *Engliſhire*, where the parentage be found of the father's or of the mother's ſide; and if no *Engliſhire* be found, then that it hath the judgment of murder.

To the office of the coroners it alſo belongeth to receive the confeſſion of felons in the hearing of witneſſes, whereby of a grand felony done by many offenders it came to paſs in the time of king *John*, that one of the offenders petitioned the king, that he would pardon him his life, for that he had accuſed the other offenders who were his companions, and that the king outlawed them; and at the requeſt of the king the earls granted, that in ſanctuaries only it ſhould remain for law, that offenders having confeſſed the felony might accuſe others, and that it was then

then ordained, that the coroners ſhould take ſuch confeſſions, and ſuch appeals but once, and not many times.

Women are not admitted to bring appeals, nor infants within the age of 21 years, no ideots, nor men profeſſors, nor clerks indicted or appealed of any crime, nor men attainted of falſe appeal, nor thoſe who are vanquiſhed in battle, but thoſe who have government of themſelves.

The appellees are to be ſeiſed upon body and goods twice in the year, that is to ſay, once after Michaelmas, and another time after Eaſter; and becauſe ſheriffs to do the ſame make their turns of the hundred, ſuch viſnes are called the ſheriff's turns; where it belongeth to the ſheriff to enquire of all perſonal offences, and of all the circumſtances of offences done within the hundred; and of the wrongs of the king and queen's officers, and of wrong done to the king and the common people, according to the articles aforeſaid in the diviſion of offences.

The appellees are to be ſeiſed upon body and goods as aforeſaid; and if any foreigner be appealed who is out of the power of the coroner, the king's commiſſary is to cauſe him to appear, or outlaw him.

CHAP.

CHAP. I.

SECT. 14.

Of the Exchequer.

THE Exchequer is a place which was ordained only for the king's revenue, where two knights, two clerks, and two learned men in the law are assigned to hear and determine wrongs done to the king and crown in right of his fees, and the franchises and the accompts of bailiffs, and receivers of the king's monies, and of the administrators of his goods, by the oversight of one chief, who is the treasurer of *England*.

The two knights usually called two barons, were for to affeer the amercements of earls, barons, and of the tenants of earldoms and baronies, so that none be amerced but by his peers.

To this place there was a seal assigned, with a keeper of it, to make acquittances upon every payment to those who desired them, and to seal writs and escheats under green wax issuing from thence for the king's revenue.

In this place there are also chamberlains and many other officers, who belong not very much to the law.

CHAP. I.

SECT. 15.

Of inferior courts.

FROM the first assemblies came consistories which we now call courts, and that in divers places, and in divers manners; whereof the sheriffs held one monthly, or every five weeks, according to the greatness or largeness of the shires. And these courts are called county courts, where the judgment is by the suitors if there be no writ, and is by warrant of jurisdiction ordinary. The other inferior courts are the courts of every lord of the fee, to the likeness of hundred courts; and also in fairs and markets, where right is to ministered without delay, whether the matter concern plaintiff or defendant, according to the first ordinances; in which courts they have conusance of debts, covenants broken, and of trespasses, and of such small things which pass not forty shillings value; and also they have conusance of trespasses, and forfeitures of the fees betwixt the lords plaintiffs and the tenants defendants, *Et e contra*.

There are other inferior courts which the bailiffs hold in every hundred, from three weeks to three weeks by the suitors of the freeholders of the hundred. All the tenants within the fees are bounden to do their suit

there,

there, and that not for the ſervice of their perſons, but for ſervice of their fees.

But women, infants within the age of 21 years, deaf, dumb, ideots; thoſe who are indicted or appealed of any mortal felony before they be acquitted, diſeaſed perſons, and excommunicated perſons are exempted from doing ſuit, and although it be that ſuch freeholders may do ſuits at inferior courts by their attornies, nevertheleſs the judgment is not to be given or holden for foreign; and if any plea be removed by writ of juſticies, replegiare, waſte, or of other nature, that enable the juriſdiction from which the writ is originally ſent, and returnable.

CHAP. I.

SECT. 16.

Of the ſheriff's turns.

THE ſheriffs by ancient ordinances hold ſeveral meetings twice in the year in every hundred, where all the freeholders within the hundred, are bound to appear for the ſervice of their fees; that is to ſay, once after Michaelmas, and another time after Eaſter; and becauſe ſheriffs to do this make their turn of hundreds, ſuch appearances are called the ſheriffs turns, where it belongeth to ſheriffs to enquire of all perſonal offences, and of all their circumſtances done

within thoſe hundreds, and of all wrongs done by the king and queen's officers, and of wrongs done to the king, and to the common people, according to the points aforeſaid in the diviſion of offences.

All freeholders within the hundred are not bounden to appear at theſe courts, for king *Henry* 3 excuſed ſome perſons, and ſaid, that it was not needful that archbiſhops, biſhops, abbots, priors, earls, barons, religious perſons, nay ſuch people, nor other who were exempted to do ſuit at inferior courts ſhould appear in proper perſon, if their appearance were not neceſſary for ſome other cauſe than only to make their appearance. And if any one hath divers tenements in divers hundreds, his preſence is not to be excuſed notwithſtanding the king's grant.

CHAP. I.

SECT. 17.

Of views of frank-pledges.

OF theſe firſt aſſemblies it was alſo ordained, that every hundred do make a common meeting once in the year, not only of the freeholders, but of all perſons within the hundred, ſtrangers and denizens of the age of 12 years and upwards, except of archbiſhops, biſhops, abbots, priors, religious perſons, and all clerks, earls, barons and

and knights, feme coverts, deaf, dumb, ſick, ideots, infected perſons, and thoſe who are not in any dozein, to enquire of the points aforeſaid, and of the articles following, and not by villains, nor by women, but by the affeerment of freemen at the leaſt; for a villain cannot indict a freeman, nor any other who is not receivable to do ſuit in inferior courts; and therefore it was anciently ordained, that none ſhould remain in the realm if he were not in ſome decennary, and pledge of freemen; it belongeth alſo to hundredors once a year to ſhew the frank-pledges, and the pledgers, and therefore are the views called the view of frank-pledges.

The articles are theſe.

BY the oaths you have taken, you ſhall declare whether all they who ought, do appear or not.

If all the freemen of the hundred, or of the fees be preſent.

If all the frank-pledges have their dozeins entire, and all thoſe who they have in pledge.

If all thoſe of the hundred, or of the fees of the age of 12 *years and above, have ſworn fealty to the king, and of the receivers of others wittingly.*

Of all blood-ſheds, of hue and cry wrongfully levied, or rightfully levied and not duly purſued, and of the names of the purſuers; of all mortal offences, and of their kinds, and as well of the principals as of the acceſſaries.

Of all exiles, outlaws, waifs, and baniſhed

perſons returned, and who have ſince received them, and of thoſe who have been judged to death, or abjured the realm.

Of uſurers, and of all their goods.

Of treaſure trove, wrecks, waifs, eſtrays, and of every purpreſture and encroachment upon the king, or upon his dignity.

Of all wrongs done by the king's officers and others to the common people, and of all purpreſtures in common places, in the land, or in the water, or elſewhere.

Of boundaries removed to the common nuſance of the people.

Of every breach of the aſſize of bread, bear, wine, clothes, weights, meaſures, beams, buſhels, gallons, ells and yards, and of all falſe ſcales, and of thoſe who have uſed them.

And of thoſe who have bought by one kind of meaſure, and ſold by another kind in deceit of merchants or buyers.

Of the diſturbers of framing lawful judgments, and of the framers of wrongful judgments, and of the abettors and conſenters thereunto.

Of every wrongful detinue of the body of a man, or other diſtreſs.

Of every falſe judgment given by the view in the other hundred, or in the fee.

Of every foreſtalment done in the common highway.

Of wrongful replevies, and wrongful reſcouſes.

Of every outragious diſtreſs in another fee, or in the market for a foreign contract.

Of all bridges broken, and cauſeys, ways,

common

common bridges, and who ought for to repair them.

Of the makers of cloaths dwelling out of great towns in places forbidden.

Of tanners and curriers of leather.

Of butchers, and who ſell unwholeſome fleſh for that which is ſound, and of all thoſe who ſell corrupt wine for ſound wine; or beer, ale, raw and not well brewed, for that which is good and wholeſome.

Of ſmall larcenies.

Of cutters of purſes.

And of thoſe who ſuffer people to uſe any myſtery for reward or fee.

Of receivers of thief-boot.

Of the makers and haunters of falſe dice.

Of outragious toll-takers, and of all other deceivers.

Of all manner of conſpirators.

And of all other articles available for the deſtruction of offenders.

And the preſentments are to be ſealed with the ſeal of the jurors, ſo that none by fraud do increaſe or diminiſh them; and that which cannot be redreſſed there by theſe preſentments, is preſentable at the ſheriffs firſt turn; and thoſe things which the ſheriffs cannot redreſs are to be preſented by the ſheriffs into the Exchequer.

All thoſe who are preſented for any offence which is mortal, and baniſhed perſons who are returned, and their receivers, and thoſe who are not in allegiance under the king, are to be ſeiſed upon, and their goods to be ſeiſed into the king's hands.

And although it be ſo that the bailiff cannot hear and determine any action at the leet, nevertheleſs if any one preſent be grieved by any wrongful preſentment, and complain thereof, or if the bailiff or ſteward have a ſuſpicion that the jurors be in ſome caſe perjured by concealing of any offence which is preſentable, or of any offender; it is lawful for the bailiffs (or ſtewards) by twelve more diſcreet men, to enquire of the truth thereof without delay, and although that the laſt jurors ſay that the firſt are perjured, nevertheleſs becauſe that no decennary or juror is not atteſtable with leſs than two juries; and becauſe the later jury is not taken but ex officio *of the bailiff, and not in the nature of an attaint, the firſt jurors are not to be taken attainted, but are only to be amerced.*

And if any one profer himſelf to ſwear fealty to the king, he is firſt to be pledged in ſome frank-pledge and put in the decennary; and afterwards ſworn to the king, and then he is forbidden to offend and commune with the offenders, and he is to be enjoined to be obedient to his chief pledge.

And to take this oath in thoſe views is none exempted who is paſt the age of 21 *years, man or woman, clerk nor layman, except aliens ſtrangers, meſſengers, or merchants, and thoſe who are in cuſtody.*

At theſe views of turns, and views of frankpledges eſſoins hold, where the abſence of thoſe who cannot be there is excuſable, and ſuch eſſoins are adjournable to the next courts following, that the eſſoiners have their warrants.

The

The Contents of the Second Chapter,

OF actions.
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CHAP.

CHAP. II.

SECT. I.

Of actions.

WHEN it is ſaid that kings and princes have the government and correction of offenders, with aid of the prelates; and to that intent they are God's vicegerents on earth, and to do the ſame they have juriſdiction over the offenders by pains, and chiefly thoſe offenders which are under their juriſdiction; nevertheleſs kings cannot nor ought not to take notice of the offences of others without actions of accuſers, which well appeareth by the example which God ſhewed when he was in his conſiſtory, and demanded who was the accuſer of the woman-ſinner; and becauſe none preſented himſelf an accuſer againſt her, to give us a perpetual example that right judgment cannot be given without there be three perſons at the leaſt, *viz.* a judge, a plaintiff, and a defendant,

dant, God ſaid to the woman-ſinner, That ſhe ſhould go in peace or quiet, ſince it belongeth not to a judge, to be both judge and plaintiff, and therefore it behoveth to ſpeak of actions, and who are and may be judges, and who plaintiffs, and who defendants.

An action is nothing elſe but a lawful demand of right, and there are three manner of actions which have their introductions by writs, and by plaints in manner as followeth, *viz.* perſonal, real, and mixt.

CHAP. II.

SECT. 2.

Of judges.

ALL thoſe who are not forbidden by law may be judges. To women it is forbidden by law that they be judges; and thence it is, that feme coverts are exempted to do ſuit in inferior courts. On the other part a villain cannot be a judge by reaſon of the two eſtates which are repugnants; perſons attainted of falſe judgment cannot be judges, nor infants, nor any under the age of 21 years, nor infected perſons, nor ideots, nor mad-men, nor deaf, nor dumb, nor parties in the pleas, nor men excommunicated by the biſhop, nor criminal perſons; for God when he was upon

earth entered into the consistory where a sinner was to be judged to death, when God wrote upon the ground, and said to the suitors who came to judge her, *Who of you is without sin?* and there gave a judgment as an example to judges, who take upon them every day to judge the people, whereby he taught them, that none should take upon themselves so high and noble a calling, as to sit in the seat of God to judge offenders, when they themselves are guilty and condemnable.

And those who are not of the christian faith cannot be judges, nor those who are out of the king's allegiance; next, those who have no commission from the king cannot be judges, nor none whose authority is repealed, nor any one after judgment is given in the cause; an example thereof appeareth in the writ of right, *et nisi feceris, vicecomes faciat*; nor none after death, or the return; none whose warrant is vicious, not any one if his superior will not have him. A judge commissary hath not power to judge but according to the points, and within the words of his commission, and the original writ, no more than the arbitrary judge hath power to go beyond the points of his submission.

CHAP.

CHAP. II.

SECT. 3.

Of plaintiffs.

PLaintiffs are thoſe who purſue their right againſt others by plaint.

All may be accuſers or plaintiffs who are not forbidden by the law.

Infected perſons, ideots, infants within age cannot accuſe, or be plaintiffs without their guardians, nor criminal perſons, nor an outlawed, exiled or baniſhed perſon, nor a woman waive, nor a villain without his lord, nor a feme covert without her huſband, nor religious perſons without their ſovereigns, nor perſons excommunicate, nor deaf nor dumb perſons without their guardians, nor the judges of the caſes whereof they are judges, nor any one who is not of the king's allegiance, ſo as he hath been more than forty days within the realm, except approvers who are ſuffered to accuſe criminally people of his own condition in favour of the peace.

How lawful men ought to complain.

They ought in friendly manner to ſhew their offenders, that is to ſay, their treſpaſſers, that they reconcile or amend themſelves towards them; and if they will not do ſo, and the cauſe be criminal, then ye are to diſtinguiſh; for if any one ſeek revenge, then it behoved him to bring his action by appeal of felony; and if he ſeeketh only reparation of damages, then he behoveth

behoveth to bring his action by writ, which is to contain the name of the king, and of the parties, and the name of the judge, and of the county, and the plaint in the demand, if the damages or the demand exceed forty ſhillings; and if not, then a plaint ſufficeth without a writ. And becauſe all ſuits of the plaintiffs could not be determined upon the firſt preferring of the ſuits, nor the ſuitors or the plaintiffs preſently relieved in their ſuits. Therefore kings uſed to go from county to county every ſeven years, to enquire of offences and treſpaſſes, and of wrongs done to themſelves and to the crown and to the common people; and of all wrongs, errors, and negligences of their officers, and of all falſe judgments; of pains pardoned or wrongfully judged, or outragiouſly; of outlaws returned, and of their receivers, of the values of counties out of hundreds, towns, manors, and of moveable goods which belong to the king, and to the crown; of the lands of ideots, of alienators of fees, of offences againſt the king's inhibition, of privileges and franchiſes prejudicial to the king; of bridges and highways, and of all other needful articles; and they uſed to do right to all perſons by themſelves, or by their chief juſtices; and now kings do the ſame by the juſtices commiſſaries in Eyre, aſſigned to hold all pleas,

In aid of ſuch Eyres are ſheriff turns needful, and views of frank-pledges, and when

when the people by ſuch enqueſts were indicted of any mortal offence, the king uſed to condemn them without anſwers, which uſage ſtill remaineth in *Almaine*; but of pity and mercy, and becauſe that man by reaſon of his frailty cannot keep himſelf from ſin, (if he abſtain not from it by the grace of God), it was accorded that no appellee nor indictee ſhould be condemned without anſwer. And kings had no juriſdiction but of mortal offences, and of the rights of the crown, and of their own rights, and of the wrongs of their miniſters, and of wrongs done againſt common law, and common ordinances, and the articles of Eyres.

CHAP. II.

SECT. 4.

Of rewards and fees.

KINGS uſed to give rewards to the chief of the ſtock, and to all thoſe who faithfully ſerved them; and from the rewards of kings others took example to reward their ſervants; and becauſe no freeman was bounden to ſerve againſt his will, by reaſon whereof none were bound to ſerve the king or any other but by the ſervice of his fee, or by reaſon of his reſidence or dwelling in another fee; ſome are bound to ſerve the king for a certainty by the year. And

it

it is not lawful for thoſe officers who take wages certain of the king, to take any wages of the people.

fees. But the judges who ſerve the king, it is lawful for them to take twelve pence of the plaintiff after the hearing of the cauſe and no more, although there be two judges, or two plaintiffs in one action: and the pleader ſix-pence, and a knight ſworn a witneſs, four-pence, and every juror four-pence, and the two ſumners four-pence.

Nevertheleſs in the time of king *Henry* I. it was ordained and aſſented unto, that jurors ſworn upon enqueſt of office, as in aſſizes, recognizances of aſſizes, re-diſſeiſins, certificates of aſſize, and attaints, and other the like ſhould not take fees becauſe they did the ſame *ex officio*; and to anſwer theſe monies, and the damages, are the defendants chargeable, if judgment be given againſt them.

And to thoſe who followed any ſuit for the king's profit, and were not any of his miniſters, king *Henry* I. gave to them the twentieth part of the profit with their reaſonable coſts. In like manner the judge was not to hear the plaintiff's cauſe, if he put not in ſecurity to anſwer his adverſary's damages, if he complain of him wrongfully.

CHAP.

CHAP. II.

SECT. 5.

Of countors or pleaders.

THERE are many who know not how to defend their cauſes in judgment, and there are many who do, and therefore pleaders are neceſſary, ſo that that which the plaintiffs or actors cannot, or know not how to do by themſelves, they may do by their ſerjeants, attornies, or friends.

Countors are ſerjeants ſkilful in the laws of the realm, who ſerve the common people to declare and defend actions in judgment, for thoſe who have need of them, for their fees.

Every pleader of others cauſes ought to have a regard to four things. 1 That there be a perſon receivable in judgment, that he be no heretic, excommunicate perſon, nor criminal, nor a man of religion, nor a woman, nor within the orders of a ſub-deacon, nor a beneficed clerk who hath cure of ſouls, nor under the age of 21 years, nor judge in the ſame cauſe, nor attainted of falſity in his place.

2 Another thing is, that every countor is chargeable by the oath that he ſhall do no wrong nor falſity contrary to his knowledge, but ſhall plead for his client, the beſt he can according to his underſtanding.

3 The third thing is, that he put no falſe dilatories into court, nor falſe witneſſes, nor move or offer any falſe corruptions, deceits, leaſings or falſe lies, nor conſent to any ſuch, but truly maintain his client's cauſe, ſo that it fail not by any negligence or default in him, nor by any threatening, hurt, or villany diſturb the judge, plaintiff, ſerjeant, or any other in court, whereby he hinder the right, or the hearing of the cauſe.

4 The fourth thing is his ſalary, concerning which four things are to be regarded; 1 The greatneſs of the cauſe. 2 The pains of the ſerjeant. 3 His worth, as his learning, eloquence and gift. 4 The uſage of the court.

A pleader is ſuſpendable when he is attainted to have received fees of two adverſaries in one cauſe; and if he ſay or do any thing in deſpite or contempt of the court; and if he fall under any of the points aforeſaid, beſides the exceptions which are to the perſon of the pleader; for no man be a pleader who cannot be a plaintiff or actor.

CHAP. II.

SECT. 6.

Of attachments.

PErſonal actions have their introductions by attachments of the body; real by ſummons

ſummons and mixt actions; firſt by ſummons and afterwards by attachments.

The law requireth that offenders in caſe of death have not ſuch mitigation or favour that they be brought or ſummoned, or diſtrained to appear in judgment by taking of their cattle, if the offenders be known, and notorious, and the plaintiff purſue them ſo ſoon as he may. And if any one fly for ſuch offence, then according to the ſtatute of Wincheſter he was to be followed with hue and cry, with horn and voice, ſo that all thoſe of one town who can are to follow the felon to the next town; and if any ſuch felon be attaint and convict of the felony, let him be killed if he cannot be otherwiſe apprehended. But it is otherwiſe in felonies not known, for it is not lawful to kill the offender without his anſwer, if he may be taken alive.

And if any one would complain to have revenge, or to drive the offender to the ſalvation of his ſoul, let him go to the coroner of the place where the offence was done, and ſet forth his complaint there as he will prove it, and the coroner is to cauſe the ſame to be diſtinctly enrolled; and if he cauſe him to record it as murder, being corrupted to deſtroy his neighbour by his plaint; ſo that he have judgment, the like is to be done to him if he prove not his plaint.

At the next court, after the appeal is enrolled, it belongeth to ſuch plaintiffs to recite their appeals, and to find ſureties to purſue

them, or to remain in priſon till they have found bail, and to the main-priſors ſuch plaints are to be delivered by coroners body for body, that they ſhall purſue their appellees, and to cauſe them to appear in court to receive juſtice when they ſhall be demanded, if they do not prove their appeals.

The perſonal offences are theſe:

Impriſonment.
Mayhem.
Wounding.
Battery.
Perjury.
Uſury.
Reſcouſſes.
Foreſtallings.
Breaking of parks.
Reſiſtance of framing lawful judgments.
Executions of falſe judgments, and all wrongful offences.
Carrying away of treaſure trove, of wrecks, waif, eſtrays.

The attachments of mortal offenders are by their bodies without ſureties, and the attachments of venal perſonal offenders are alſo by their bodies, but yet they are bailable.

Real offences are thoſe upon which are grounded writs of right, of coſinage, of dower, of right of advowſon, of entry, of eſcheat, writs of *Quo jure*, of formedon, and of all writs, feodals.

Mixt offences are thoſe upon which theſe writs are framed, *viz.* of cuſtoms and ſervices,

vices, of villanage, of covenants, of homage, of rendering diſtreſſes, of meſne and other acquittances, of eſcheats, and the like, and by reaſon of the mixture of their introductions they are called mixt.

CHAP. II.

SECT. 7.

Appeals, and to whom appeal is given.

THE action of appeal is not given to all alike, but every one is allowed to have his action of treſpaſs to whom any treſpaſs is done, except ſuch as cannot have any action at all.

Every one may have an appeal of burning to whom the damage is done, and the property of the thing burnt doth belong.

Parents, kindred, and allies, uſed to be admitted to bring appeals of murder; but the appeal of the wife of the killing of her huſband is to be received before all other; and yet not of all his wives, but of her only who lieth betwixt his arms, which is as much as to ſay in whoſe ſeiſin he was murdered; for if he had many wives, and all were alive at the time of his murder; nevertheleſs ſhe only is admitted to bring the appeals of all the reſt whom he laſt took to be his wife, although in right ſhe be not his wife; and the reaſon thereof is, becauſe it belong-

eth not to the temporal court to try, which was his wife of right, and which in fact; and the appeals of all other are to be ſuſpended, pendant the ſame appeal brought.

After the appeal of the wife is the appeal of the ſon lawfully begotten, of the murder of his father, to be received before all other, it is ſaid (lawfully begotten) becauſe a baſtard is not to be accounted amongſt ſons, for the common law only taketh him to be a ſon whom the marriage proveth to be ſo.

After the appeal of the eldeſt ſon, the appeal of the next of blood is uſed to be received, and ſo from one degree to another in the right line of coſinage; and if the blood fail in that line, then they of the collateral line are admitted to bring the appeal; or the kindred where the blood faileth, according to the degrees of conſanguinity and affinity, and eſpecially in the line of the father's ſide; but the appeals of murder were reſtrained by king *Henry* I. to the four next degrees of blood.

And if any one within the age of 21 years do bring an appeal, the defendant is not bound to anſwer ſo high an action until he hath paſſed that age; and therefore ſuch appeals are to be ſuſpended till both the parties of full age, if exception in the caſe be taken to the nonage.

Men and women, clerks and laymen, infants and others, of what condition ſoever they be, may bring appeals, except thoſe who

who are not ſuffered to bring any actions; and although it be that many do bring appeals, yet one nevertheleſs is admitted to continue, and pendant that, all the others are to be ſuſpended. And in all caſes the appeals againſt the acceſſaries are to be ſuſpended, pendant the appeal againſt the principal, be it one or many.

CHAP. II.

SECT. 8.

Of proceſs of exigent in appeals.

AT the firſt county the coroner is to do no more but to enter the pledges who properly are main-priſors, and to command that ſuch take the appeals, and ſeize all their poſſeſſions and their goods into the king's hands, as before is ſaid; and if they be taken, that they be kept till due deliverance be of them, and if they be not to be found, and the plaintiff come at another county, and recite his appeal or appeals, then are ſuch appellees demandable only by their names, and by ſuch names as they are beſt known by, that they appear to anſwer the king's peace; for if any one be appealed as ſon of the father, and is known by another Sir-name, the appeal is in ſufficient, and by conſequence abatable at the peril of the

plaintiff; and at the third county they are to be demanded in like manner as before, at which county court if the appellees appear not, nor are taken into main-prize to appear at the next court, judgment is to be given againſt them for their contempt by the coroners; and thoſe who do appear before judgment of the coroner, are preſently to be delivered over to the gaol, where they are to be received without difficulty of fine, or requeſt.

CHAP. II.

SECT. 9.

Of gaol and gaolers.

A Gaol is nothing elſe but a common priſon, and as a leper, or a man who hath a diſeaſed body, is not to be ſuffered to dwell or remain amongſt men who are ſound; ſo mortal ſin is a kind of leproſy which maketh the ſoul abominable unto God, and therefore ſuch mortal ſinners or offenders ought to be ſeparated from the ſociety of the people. And to the end that innocents be not infected with their offences, gaols were ordained in every county to keep ſuch mortal offenders in, there to remain till judgment were given againſt them in caſe the offences were notorious.

There

There are two kinds of prisons { *common*, and *private*.

Every common prison is a gaol, and none hath a gaol but the king only.

A private prison is another prison, from whence every one may escape who can, so as he do no other trespass in the escape. None are imprisoned in a common prison but for a mortal offence, and therefore it was forbidden by king *Henry* III. That none should levy money for any escape in the land, if the escape were not adjudged before the justices in Eyre, whether for the same a corporal or a pecuniary punishment were awardable or not; and because it is forbidden that none be pained before judgment, the law requireth, that none be put amongst vermine, or in any horrible nor dangerous place, nor into any other pain; but it is lawful for gaolers to fetter those they doubt, so as the fetters weigh no more than 12 ounces; and to enable the keeping of those in the gaol who are violent, outragious, or do other trespass there.

CHAP. II.

SECT. 10.

Of people bailable in appeals.

SOME appeals of mortal offences, although they are not bailable by law, neverthe-

nevertheleſs they are ſuffered to be bailed when they are brought into the gaol; as namely, the appeals of murder, robbery, burglary, larceny, or out of priſon, where it is found that they are wrongfully appealed, and for ſuch caſe was the writ *de odio & atia* invented.

Thoſe who are condemned to have corporal puniſhment are not to be bailed; but it is otherwiſe of thoſe who are impriſoned for a fine, or any other pecuniary penalty or puniſhment.

CHAP. II.

SECT. II.

Of the appeal of majeſty.

OF the crimes of majeſty, nor of falſifying, nor of any thing which concerneth the king's right, there lieth no appeal, but actions or indictments.

For ſlanders of ſodomy, our ancient fathers would never agree thus for the ſcandals of ſo doing, that any one ſhould bring actions by way of accuſation, nor indictments, nor would ever aſſent that they ſhould be heard of in regard of the abominableneſs of the ſin; but they ordained, that ſuch notorious ſinners ſhould be forthwith judged, and judgments framed againſt them.

Of the imagining of the king's death, and of other kind of offences of majeſty againſt an earthly king, there were accuſations but

for

for indictments; for every true ſubject was with all expedition to ſhew the ſame to the king, ſo that he be not taken or ſeiſed upon by his long ſtay, or by great delay, in what caſes the accuſations are to be received; and in full parliament let the accuſer by himſelf, or by a ſerjeant do it, according as it was done in this caſe in the time of king *Edmond* in theſe words.

Rocelyn here ſaith againſt *Walligrot*, That at ſuch a day, in ſuch a year of the reign of ſuch a king, into ſuch a place came the ſaid *Walligrot* to this *Rocelyn*, and found him to be in counſel, and in aſſiſtance with *Arheling Turkille*, *Ballard* and others, to arreſt, or to make priſoner, or to kill our lord king *Edmond*, and to do the ſame they were ſworn to keep counſel, and to commit this felony according to their power.

CHAP. II.

SECT 12.

Appeal of falſifying.

THIS offence is not openly done, it is ſeen by a falſe writ, or falſe money found in one's poſſeſſion, and although that three perſons are neceſſary in judgment in this caſe, nevertheleſs it is ordained, that the poſſeſſor of ill things be by the judge *ex officio* driven to anſwer to the title of their poſſeſſion thereof, which is not ſo in all caſes.

And

And if there be any one who will not plead to judgment, then he is to be returned to the gaol, and all his goods are to be ſeiſed into the king's hands, and to be ſeiſed upon as in all criminal actions brought by appeals or indictments; alſo in venal actions ſuch contumacers uſed to be condemned for not pleading, as by their pleading and lawful attainder.

And if any one ſaith that he came to the money lawfully, and doth not know by whom, nor none offer themſelves againſt him to prove the affirmative of the action; then it belongeth to the poſſeſſor of the money to prove the affirmative of his anſwer.

And if any one ſaith, that it came to him from a man certain, let it be as after herein is ſaid.

CHAP. II.

SECT. 13.

Of appeals of treaſon.

TReaſon is ſet forth in appeals in this manner according as it is found in the rolls in the time of king *Alfred*.

Bardulf here doth appeal *Dirling* there for that, that in as much as this ſame *Dirling* was the ally of the ſame *Bardulf*, the ſaid *Dirling* came ſuch a day of the year, *&c.* and

and during the alliance raviſhed the wife of the ſame *Bardulf*, or counterfeited his ſeal; or did him ſome other miſchief. Or thus; *Hakenſon*, father, or other parent, or lord, or ally, this *Dirling* killed; or thus, remained in aid, and in counſel with *Daffray*, the adverſary of this *Bardulf*, in ſpeech which touched the loſs of his life, or members, or of his earthly honour; or thus, diſcovered his counſel or his confeſſion; or thus, whereas he ought to have a lawful inrolment according to law of ſuch a plea, the ſame *Dirling* falſly inrolled the ſame to his diſ-inheriſon, or otherwiſe to his damage; or thus, whereas he was his attorney in ſuch a plea, before ſuch judges to gain or loſe, and ſhould have done him right, he loſt by his default, or by his folly, negligence or colluſion, or reſtored the thing in demand, or did him ſuch hurt. Or thus, whereas he ſhould have excuſed him, or eſſoined him ſuch a day, *&c.* he ſuffered him to loſe the poſſeſſion, or ſuch other thing through his default; or thus, whereas he ought to have truly ſpoken for him in ſuch a caſe, the ſaid *Dirling* did ill adviſe him, or ſpeak againſt him in ſuch a point; and afterwards thus, this treaſon did the ſaid *Dirling* feloniouſly as a felon, and traitorouſly as a traitor, and if he will deny it, *Bardulf* is ready to prove it upon him by his body; or as a mayhemed man, or a woman, or a clerk ought to prove.

And

And although that advice be given to ſome, that it belongeth not to the plaintiff to ſhew the proof of his action, until it be denied of the adverſe party to haſten right, nevertheleſs ſuch uſage is ſuffered, as in this caſe following, and others it is; as, if any ſheriff or other, take one to be bail or ſurety for another, and he denieth it, it behoveth the plaintiff to ſay that he wrongfully denieth it, and therefore wrongfully; for in ſuch a year, ſuch a day, and before ſuch a one, of his own will he became pledge for ſuch a one, and the plaintiff to haſten his buſineſs ſuffered to ſhew the ſame in his declaration, and if he denieth it, *&c.* the anſwer of the adverſe party is ſuffered to be taken, and afterwards he is to go to proof by his replication.

CHAP. II.

SECT. 14.

Of appeal of burning.

THE appeals of burning are in this manner; *Cedde* here appealeth *Harding* there (which he ſir-names) for that, that whereas this ſame *Cedde* had one houſe, or divers; or a ſtack of corn, or of hay, or a mill, or other manner of goods in ſuch a place; or thus, whereas *Wetad*, father or mother of this *Cedde* was in ſuch a place ſuch a day, *&c.* the ſame *Harding* came thither, and put fire into the houſe,

houſe, and burnt the ſaid *Wetad* therein, whereof he died; and this felony the ſaid *Harding* did feloniouſly.

CHAP. II.

SECT. 15.

Of the appeal of murder.

OF the offence of murder, the appeals are ſuch; *Knotting* here appealeth *Carling* thus; that where *Cady*, father, brother, ſon or uncle of this *Knotting* was in God's peace and the king's, *ſcil.* in ſuch a place, the ſame *Carling* came thither, and the ſame day and year, *&c.* with a ſword, or other kind of weapon run him through the body, gave him ſuch a wound, in ſuch a part of his body whereof he died; this murder he did upon malice forethought feloniouſly, *&c.* or thus, with a hatchet, or with a ſtone, or a ſtaff ſtruck the ſaid *Cady* upon the head, or elſewhere, of which ſtroke he died ſuch a day, at ſuch a place, *&c.* or thus, that where the ſame *Cady* was hurt, in ſuch a part of his body, of a curable wound; or had ſuch a ſickneſs, or curable diſeaſe, and put himſelf to curing of this *Carling*, who ſaid he was a phyſician; the ſaid *Carling* came, and took upon him the recovery of the ſaid *Cady*, who by his folly, negligence, *&c.* feloniouſly killed him; or thus, ſo long delayed

layed his deliverance, whereby he killed him; or thus, hung him, or felonioufly killed him, or falfly judged *Regicald* who firft attainted the 12 jurors, witneffes, who wrongfully hanged *Gordian* her hufband by 24 jurors, who afterwards by feveral appeals hanged the firft 12 jurors; or thus, pained him fo much to make him confefs, and to be an approver, that he falfly acknowledged himfelf to have offended, and made him to appeal innocents of crime, fo that it lay not in *Carling* that the fame *Knotting* was not adjudged to death; or thus, whereas the faid *Knotting* lay mayhemed upon his bed, and was reckoned fo young, or fo old, or fo fick that he could not go, the faid *Carling*, came and carried the faid *Knotting* from fuch a place, fuch a day, *&c.* to fuch a water, ditch, marle-pit or defert, and therein threw him, and fo left him without help or fuftenance, fo as he did as much as lay in him, that he was not there dead of famine; this mifchance he did unto him felonioufly, as a felon, *&c.*

CHAP. II.

SECT. 16.

Appeals of robbery and larceny.

THE appeals of robbery are thefe; *Ofmond* here appealeth *Saxemond* there, that

that whereas this *Osmond* had a horse of such a price, the said *Saxemond* came such a day and robbed him of his horse, &c. or of such a garment of such a price feloniously, or of two oxen of such a price, or other kind of goods of such a price, &c. he received the said goods so stolen, or was aiding, or consenting thereunto.

Of larceny thus: Armelwolde here appealeth *Oskerrill* there: that whereas he had such goods, namely, &c. he feloniously, and as a thief stole them away.

In these actions meet two rights, the right of the possession, as of the thing robbed or stolen out of his possession who had no right in the property, as of things taken from the bailee or lessee; and the right of the property as it is of a thing stolen or robbed out of the possession of him who hath the property in the thing.

CHAP. II.

SECT. 17.

Of the appeal of burglary.

OF burglary are these appeals; *Athalf* here appealeth *Colgrum* there; that whereas the said *Athalf* was in such a place in peace, &c. thither came the said *Colgrum*, and with force and arms assaulted his house, and in such a part brake it, or did such like other violence feloniously, &c.

CHAP. II.

SECT. 18.

Of the appeal of imprisonment.

OF the appeal of imprisonment thus; *Darling* here appealeth *Wiloc* there; for that whereas the said *Darling*, &c. the said *Wiloc* came and arrested the said *Darling*, and brought him to such a place, or at such a day, and put him into the stocks; or in irons, or in other pain, or incloſure, from such a day until such a day, *&c.* or thus, contrary to sufficient bail offered by him, in a case bailable detained him, or after judgment given for his deliverance from such a day to such a day, this felony he did feloniously, *&c.*

CHAP. II.

SECT. 19.

Of appeals of mayhem.

APPEALS of mayhem are these; *Umbred* here appealeth *Maimawood* there; for that whereas the said *Umbred*, &c. the same *Maimawood* came and made an assault upon him of fore-thought malice, and armed in such a manner, cut off the foot, or the hand of the said *Umbred*, or with such a

ſtaff ſtruck him upon the head whereby he pierced the ſcull of his head, or with a ſtone ſtruck out his three fore teeth, whereby he mayhemed him; this mayhem he did feloniouſly, *&c.*

CHAP. II.

SECT. 20.

Of the appeal of wounding

OF wounding are theſe appeals; *Barnings* here appealeth *Olif* there; that whereas the ſaid *Barnings*, &c. the ſaid *Olif* with ſuch a weapon ſtruck him, and wounded him in ſuch a part of his body, which wound contained ſo much in length, ſo much in breadth, and ſo much in depth; and this wound he gave him feloniouſly.

CHAP. II.

SECT. 21.

Appeal of rape.

AN appeal of rape is in this manner; *Arneborough* here appealeth *Atheling* there; for that whereas the ſaid *Arneborough*, &c. the ſaid *Atheling* came, and with force caſt her down, and in deſpite of her, feloniouſly raviſhed her; and becauſe that every rape uſed not to be holden for a mortal of-

fence, no appeal was thereof, if therein ſhe did not ſay, and took away her virginity.

CHAP. II.

SECT. 22.

Of offences real, at the king's ſuit.

THERE are many who ſeek not abſolution, notwithſtanding they have offended againſt the king mortally; and therefore becauſe the king is bound *ex officio* to compel them to ſalvation, the king uſed every ſeven years to go through all ſhires in his realm, to make enquiry according as before is ſaid; further, in aid of ſuch Eyres were coroners, ſheriffs turns, views of frankpledges and other enqueſts to enquire of thoſe offenders as is ſaid.

But becauſe ſome are wrongfully ſlandered, king *Henry* I. ordained, that none ſhould be arreſted nor impriſoned for ſlander of mortal offence, before he were thereof indicted by the oaths of honeſt men, before thoſe who had authority to take ſuch indictments, and then they were firſt to be ſeiſed upon by their bodies, and goods, as in appeals, and to be kept in priſon till they cleared them of the infamy before the king or his juſtices.

Of the crime of majeſty in no kind was any indictment but of hereſy or Romery, whereof

whereof if any were indicted and brought to judgment, let there be an indictment for the king by ſome of his people in this manner, according to that which is found in the rolls of ancient kings.

I ſay *Sebourge* there is defamed by good people of the ſin of hereſy, becauſe that he of evil art, and belief forbidden, and by charms and enchantments he took from *Brighten* by name, *&c.* the flower of his ale, whereby he loſt the ſale thereof, ſo that judgment be not given of leſs than three perſons; or thus, *Molling* who is there defamed by good people, that ſuch a day he denied his baptiſm, and cauſed himſelf to be circumciſed, and became a Jew, or a Saracen, or offered or ſacrificed to *Mahomet* in contempt of God, to the damnation of his ſoul; and this offence he did felonioufly, *&c.* and ſo in every like caſe for the king; and if he will deny it I am ready to prove it upon him for the king, as to the king it belongeth to do; that is to ſay, according as an infant within age.

Of falſifying thus; I ſay for the king, that *Mimunde* there is defamed, *&c.* for that he ſuch a day, *&c.* falſified the king's ſeal, or his money, in ſuch a kind, or ſuch, *&c.*

Of treſpaſſes indictments now ceaſe; of burnings thus, I ſay, *&c.* that *Seabright* there is defamed, *&c.* for that at ſuch a day, *&c.* he ſet a fire ſuch a houſe or goods, *&c.*

Of murder thus, I ſay, &c. that ſuch a one, with ſuch a weapon ſtruck *Agole* in ſuch a part of his body, by which ſtroke he is killed, &c.

The degrees of acceſſaries are to be ſhewed after the principals according to their right.

Of larceny in this manner; I ſay, that *Cutbert* there, &c. robbed ſuch a man known, or unknown of his horſe, or of other kind of goods, &c. or feloniouſly ſtole, or was conſenting to the offence of ſuch thieves known, or of unknown thieves by taking of thiefboot which is a receipt of larceny, which he wittingly took to ſuffer ſuch a one to paſs, or to ſtop ſuit, or wrongfully to procure his pardon.

CHAP. II.

SECT. 23.

Of offences perſonal at the king's ſuit.

A Perſonal offence is divided into two branches, whereof the one extendeth to perſons, and the other to goods.

The venial offence which extends to perſons is dividable into great offences, and ſmall offences; and although the king have conuſance of all offences yet he reſerveth only the ordering of all groſs offences to himſelf, and the conuſance of the leſſer he leaves to all thoſe men who have courts within their demeſnes; and upon this diviſion of offences hath the king eſtabliſhed the peace, ſo as ſuch lords and bailiffs have the ordering of the peace for ſmall offences. The

The venial offences perſonal are theſe; perjury when one telleth a lie againſt the king; and perjury of his officers, the mortal offences not declared feloniouſly, as impriſonment, mayhem, wounding, battery, are to be ſhewed without appeals, alienation of old treaſure found, diſſeiſin, re-diſſeiſin, and many others; the declarations of perſonal offences, venials, infamatories, are to be declared at the king's ſuit in this manner.

I ſay for our lord the king, that *T.* there is perjured, and lieth againſt the king; that whereas the ſaid *T.* was the king's chancellor, and was ſworn that he ſhould not ſell nor deny right, nor remedial writ to any plaintiff, the ſaid *T.* ſuch a day, *&c.* and ſold to ſuch a one a writ of attaint, or other remedial writ, and would not grant it him for leſs than half a mark, *&c.* or thus, whereas he was one of his judges aſſigned, and was ſworn to do juſtice, *&c.* he in this manner, in ſuch a court gave judgment, or awarded againſt ſuch a party, or releaſed ſuch a party, or uſurped ſuch juriſdiction upon the king; or made himſelf judge, coroner, or ſheriff, bailiff, or other miniſter of the king's, without warrant; or thus, whereas he was chancellor of the Exchequer, *&c.* he forbad to give an acquittance of ſo much as ſuch a one had paid of the king's debt under the Exchequer ſeal, or delayed to give an acquittance from ſuch a day till ſuch a day, and would not give an acquittance unleſs he bought

it for ſo much; or thus, for that he holdeth plea againſt the king forbidding, or in prejudice of the king and his crown, and the rather ſeeing it belongeth not to any eccleſiaſtical judge to hold ſecular pleas, but only of teſtamentary and of matrimony; or thus, he diſturbed the giving of judgment, or ſurceaſed ſo to do juſtice by negligence, or by his conſent.

In this manner are the preſentments to be made at the king's ſuit, of perſonal wrongs of all his miniſters great and ſmall; and alſo againſt all others not his miniſters, of all wrongs done to the king by thoſe who have ſworn fealty to him.

CHAP. II.

SECT. 24.

Of venial treſpaſſes, and perſonal ſuits.

TO thoſe who have cauſe of action, and will not purſue revenge according to their rights, by actions of treſpaſs to recover damages for the treſpaſſes; nevertheleſs ye are to diſtinguiſh where the treſpaſs is done to the perſon of a man, and where to his goods.

And if to a man's perſon, every one may have an action to whom the treſpaſs is done,

done, except thoſe who can maintain no action without their guardians.

And if to the goods, then ye are to diſtinguiſh whether to his proper goods, or to the goods which he hath with others in common.

And if to the proper goods, then to diſtinguiſh if proper to a man, or belonging to another thing, as to the crown, or to any church.

If to a man, then to diſtinguiſh if to a man free of himſelf, or to a man who is in ward.

And if to a man free of himſelf he hath ſeveral actions, and if proper to any other in ward, the action belongeth to the guardian.

If to a man in ward, the action belongeth to the guardian, or to the next of kin, parent, affine or ally of his name, to the uſe of him who is in ward.

Of goods which are in common no ſeveral action lieth, and therefore of goods which belong to men of religion, the action belongeth to the ſovereign of the houſe, in his name for him and his covent, or in his own name, and the name of him who is in his cuſtody, if the action be an action perſonal, venial.

And there is a difference betwixt actions which are to cauſe death, and pardonable actions, for as much as to mortal actions the ſuit is to be brought firſt againſt the principals, and afterwards againſt the acceſſaries; and in venial actions of perſonal treſpaſſes,

all

all ought to be comprehended in the plaint in common, the principals, the commanders, the conſpirators, and the acceſſaries, for as much as a man ſhall not recover ſeveral damages by ſeveral plaints thereof; nevertheleſs none of the acceſſaries is to plead to the action before the principal hath pleaded, or be condemned for his contempt.

Perſonal treſpaſſes uſed to be heard and determined in inferiour courts of lords of fees, and then the offenders were attachable by their bodies, and they uſed to keep them and bring them to judgment, if they were not bailed, without offending the law.

The remedial writ of treſpaſs requireth bail to them, which whoſoever could not find was to remain in cuſtody without his keeper, becauſe they were bound to acquit their pledges.

And it any nevertheleſs become pledges of their own will in ſuch caſes, they are to be taken; but if they are thereby endamaged by non-ſuit of the party, they had no recovery againſt the principal ſurety; a purſuing may be in divers manners, ſometimes by pledges, as it is of thoſe who can find them; ſometimes by truſting them, as it is in caſe of foreigners and poor, who have not ability to find pledges; and ſometimes by the bodies of the plaintiffs, as it is of appellees, who have no other ſureties but the four walls of the priſon.

And

And for the dureneſs which is uſed to be done to the bodies of offenders in perſonal offences, or venial, king *Henry* I. ordained, that they ſhould arreſt them firſt by their bodies, until they juſtify themſelves by bail, and if they be not found, and if they do not diſcharge their bail, they are then to be diſtrained by their lands to the value of the demand, and if they then make default, their lands are to be delivered over to the plaintiffs, until they have made ſatisfaction by a reaſonable extent, if before they have not acquitted themſelves by law.

Of pledges, note that thoſe are pledges for purſuing who the plaints affirm, and thoſe are pledges who reprieve any other thing beſides the body of a man, for they are not properly pledges, but main-priſors, becauſe they ſuppoſe that thoſe pleviſables are delivered to them by bail for the body.

The ordinary declaration of venial plaints begins in this form; I ſhew unto you who am here, that *E.* who is there, wrongfully delayed his action, by a falſe eſſoin which he caſt ſuch a day, in ſuch a place, *&c.* to the great damage of the plaintiff.

And of treſpaſſes done againſt the king's peace it is eaſy to ſhew, and of treſpaſſes done againſt lords or bailiffs, and in hatred of falſe plaints, king *Henry* I. ordained, that audience were fordidden to plaintiffs in venial actions, and that none was bounden

to

to answer such actions, if they had not present proof of a lawful suit.

And there is such a difference between a criminal action in pleading and a venial, that if a serjeant put these words, *scil.* (feloniously as a felon, *&c.*) in declarations of venial actions, the declarations are vitious and abateable, because that no judge hath power by a venial plaint to determine felony; and in the same manner is the count vitious and abateable, where the count is upon the right of property, and upon the plea of possession, *Et e contra*, and there are some actions wherein no declaration or count; as in disseisin, re-disseisin, certifications of assize, false judgments and attaints.

CHAP. II.

SECT. 25.

Of assize of novel disseisin, and re-disseisin.

AMongst other personal trespasses, it is not to be forgotten to make mention of disseisin, of which it is needful first to see to the title, why it is called *assise of novel, disseisin.*

An assize in one case is nothing else but a cession of the justice, in another case it is

is an ordinance of certainty, where nothing could be more or leſs than right, for the great evils which are uſed to be procured in witneſſing, and the great delays which were in the examinations, exceptions and atteſtations, *Randolphus de Glanvile* ordained this certain aſſize, that recognitions ſhould be ſworn by 12 jurors of the next neighbours, and ſo this eſtabliſhment was called aſſize. In the third caſe aſſize is taken properly for an action in four manner of pleas poſſeſſories;

Scil. { *Novel diſſeiſin.*
Mort d'anceſtor.
Darrein preſentment.
Juris utrum.

But ſuch aſſize are called *petit* aſſizes, to make a difference from grand aſſizes, for the law concerning fees is grounded upon two rights, of poſſeſſion, and property.

And as the grand aſſize ſerveth to the right of property, ſo the *petit* aſſize ſerveth to the right of poſſeſſion, and becauſe ſuch *petit* aſſizes are to be taken of the counties where the fees are, by the ſtatute of king *Edward* called ſuch actions, aſſizes, either for the general ceſſion of the juſtices, and of others, or from the proper names of ſuch actions.

It is called *novel*, to put a difference from thoſe which are ancient, for anciently kings uſed to go over the ſhires to enquire, hear, and determine offences, and to redreſs the wrongs there, and that which

was

was not brought in such Eyres of personal trespasses before remained to the judgment of God alone; and afterwards by reason of the multitude of offences, and that kings could not do all by themselves, therefore they sent their commissaries who now are called justices in Eyre, who have not power to decree and determine a personal offence, but for a thing brought and not determined in the last Eyre; then for as much as the disseisin, or the personal action was brought before the Eyre, the action or disseisin was ancient; but if the disseisin be done since the last Eyre, then it is a novel disseisin.

Disseisin is a personal trespass, of a wrongful putting one out of possession, it is said wrongful, to put a difference from rightful, which is no offence; as if I take from my wife, or my villain, or from another who is my ward, that which is my own; or if you take from me that which is mine I take it from you again, I do not offend; for I am warranted so to do by the law of nature, seeing this usage is common to men, beasts, fishes, fowls, and other earthly creatures, but I cannot do so afterward; for if I take from you forcibly any thing whereof you have had the peaceable possession, I do disseise you, and I do wrong to the king, when I disseise him of his right, or use force where I ought to use judgment. On the other side, that which is taken from me by the rightful judg-

judgment of any judge, ordinary, or arbitrary, is not taken wrongfully from me.

Wrong is here taken as well for deforcement or diſturbance, as for ejection.

Deforcement, as if another entereth into another's tenement, when the rightful owner is at the market, or elſewhere, and at his return cannot enter therein, but is kept out, and hindred ſo to do.

Diſturbance is, as if one diſturb me wrongfully to uſe my ſeiſin which I have peaceably had; and the ſame may be done three ways.

1 As when one driveth away a diſtreſs, ſo that I cannot diſtrain in the tenement liable to my diſtreſs, whereof I have had ſeiſin before.

2 Another is where one doth replevy his diſtreſs by the ſheriff, or the hundred wrongfully.

3 As if one diſtrain me ſo outragiouſly that I cannot manure, plow, or uſe my land duly; in which caſe it maketh one an outragious diſtrainer to diſſeiſe, or for to eject the tenent; as if any one eject me out of my tenement, whereof I have had peaceable poſſeſſion by diſcent of inheritance, or other lawful title to the poſſeſſion.

Note that all right is in two kinds, either in right of poſſeſſion, or in right of property, and therefore the right of property is not ſo determinable by this aſſize, as is the known poſſeſſion, or as that which altogether ſavoureth of a poſſeſſory right.

The

The remedy of disseisins hold not of moveable goods, nor of any thing which falleth not into inheritance, as land, tenement, rent, advowson of a church, and a house of religion, franchises, and the appurtenances, and such other rights, whether they are holden perpetually in fee, or for term of life, or years, according to the contract, as well as the land mortgaged to such a one and his heirs, until so much be paid to such a tenant or his heirs.

Ejection of a term of years falleth into the assize, which sometimes cometh by lease, or bailment, or loan, and sometimes by right of wardship by the nonage of some heir, and to the recoverer it belongeth to hold them according to the contracts.

Villanage in some case falleth into this assize; as to free-tenants who are ejected or disturbed to continue their seisin of lawful presentments, and whereof a bargain is made betwixt any donor and any purchaser, and although that the purchaser cannot present living the clerk of the donor instituted into the church; the title nevertheless of contracts barreth not altogether the donee, so that afterwards he cannot present against the form of the contract, and if he do the donor falleth into this assize, and the bishop who gave the institution to him who is not presented, by him to whom the right of presentation doth belong in his own name.

Into

Into this aſſize alſo fall donors and purchaſers, who make vicious contracts of lands and poſſeſſions, as alſo it is of guardians, and of farmers who leaſe their lands for a longer time than their term endureth, in prejudice of the lord of the fee, or of him to whom the reverſion belongeth, as it is of thoſe leſſors who have fee-tail.

On the other ſide fall into offence thoſe the king's officers, and others who diſſeiſe a man, or a corporation of their franchiſes, whereof they have the inheritance by lawful title, if not through the default, abuſe or negligence of thoſe, or of their bailiffs, to whom the franchiſes belong.

Into this offence alſo fall all attornies, who yield up the inheritance, or freehold of their clients in judgment, and the juſtices alſo who yield to them, and the tenants alſo, for it behoveth not attornies to loſe their clients rights, but it behoveth them to defend them till a rightful judgment be given.

Into this offence fall all thoſe who commit any waſte, exile or deſtruction in lands, as that which is not juſtifiable by law, as thoſe who aſſign over lands to others, where in the feoffments to themſelves, or their anceſtors there is mentioned but of heirs only, and that may be two ways, *viz.* to heirs general, or to ſpecial heirs, named as in fee-tail, or not named, as in frank-marriages.

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This action all persons may bring, men, women, clerks and laymen, infants and others of what condition soever they be, who are not forbidden by the law.

It is forbidden to villains to bring this action without their lord, for as much as they are in the custody of their lords, in the same manner to feme coverts, and to others who are in ward, and to those who were never tenants in their own names, but in the name of the lord.

The law also denieth the suit to those who have withdrawn themselves from the same action in judgment, or have released or quit-claimed their right.

And note, that *retrahere*, & *sub-trahere* is not all one, *retrahere* doth acquit a man from those things which are in his writ, or in his action; but neither the one nor the other can utterly bar him, if he do not openly declare the same; but *subtrahere* withdraw his action, every plaintiff may do either by himself or his attorney, whether he be present in court or absent, and altho' it be that one will not pursue his action, yet he doth not so bar himself, nor withdraw himself, but that he may have a new writ, and a new plaint, if he do not openly in judgment say, that he withdraweth his action; these remedies hold against a disseisor, and where there are many, against all those who appear in the force, or in the aid.

CHAP.

CHAP. II.

SECT. 26.

Of diſtreſſes.

ANY action rightfully grounded upon a perſonal treſpaſs, accrueth to people wrongfully diſtrained, which is called a diſtreſs; and becauſe that none can cover his robbery or his larceny by diſtreſs, it is firſt to be known what is the diviſion of diſtreſſes.

2 Who may diſtrain.

3 When, and of what things a repleve lieth.

A repleve is nothing elſe but a reaſonable diſtreſs.

A reaſonable diſtreſs is to the value of the thing in demand without any other fault, for no outragious diſtreſs is termed lawful.

There are two manner of diſtreſſes, a dead diſtreſs, as of corn, wine, and other ſuch chattels; and a live diſtreſs, as of a man, a beaſt, and of ſuch like things.

No man can diſtrain, who is not warranted ſo to do by law, or by ſome other ſpecial deed.

1 By the law, as for damage feaſance, and for debts and contracts of foreigners; for foreigners are diſtrainable by their moveable goods, and ſummonable becauſe they

are not free tenants in the places where they are diſtrained; and for (as well) a debt recovered as any other, and ſo for amercements of damages, and arrearages of account, or other thing.

2 By deed, as if you grant me any annuity, and do grant me to diſtrain in the lands for the arrearages of the ſame, or other ſervice, and bind your poſſeſſions which are not of my fee in whoſe hands ſoever they come to a diſtreſs.

When and what things a man may diſtrain.

A man may diſtrain cattle or other things ſo ſoon as he finds them damage feaſant, and not the day after, and after the time of payment, and not before, and not every day; and in the night a man may not diſtrain, but only in the day time, but for damage feaſant; for before ſun riſing, or after ſun-ſet, no man may diſtrain but for damage feaſant, where a man may diſtrain in places, or lands within the fee, liable to diſtreſs and not elſewhere.

Of what goods a diſtreſs may be.

Of all goods which the law forbiddeth not; the law forbids that a man ſhall not diſtrain within the view, where he may have a ſufficient diſtreſs in an open covenable place.

A covenable dead diſtreſs is not by armour or veſſels, by robes or jewels, by writings if there be found another diſtreſs ſufficient in itſelf.

A covenable live diſtreſs is not to be of ſheep which art gelt, muttons, of dogs, birds,

birds, fiſhes, or by ſavage beaſts when there is a ſufficient diſtreſs found of other cattle.

A diſtreſs is to be carried, led, or driven away at the will of the diſtrainer, and in caſe any diſtrainer find out any diſtreſs but within ſome incloſure, in ſuch caſe he can do nothing, but to ſhut up the goods incloſed, and ſo ſequeſter them without doing any other violence, and if a man break up ſuch pound, or the locks of it, or part of it, he greatly offendeth againſt the peace, and doth treſpaſs to the king, and to the lord of the fee, and to the ſheriffs, and hundredors, in breach of the peace, and to the party, and to the delaying of juſtice; and therefore hue and cry is to be levied againſt them, as againſt thoſe who break the peace.

A dead diſtreſs found in a covenable place, nor a live diſtreſs is not to be led or driven out of the manor, or out of the hundred, or out of the county, nor to be put in any pound or elſewhere, where he to whom the goods are belonging cannot have ſight of them, but is to be put into ſuch a a place where the diſtreſs, and he who is the owner may be leaſt endamaged.

There are two kinds of leading of diſtreſſes.

1 One when a man leads away a live diſtreſs againſt ſufficient gages and pledges.

2 Another, when one will not ſuffer himſelf to be diſtrained lawfully, and the one

and the other are perſonal treſpaſſes againſt the peace.

And then if any be wrongfully diſtrained, ye are to diſtinguiſh whether it be by thoſe who have power to diſtrain or by others.

And if by others, then lieth an appeal of robbery, whereof *Hailif* gave a notable judgment; and if by thoſe who may diſtrain, then they ought to deliver the diſtreſs by gages and pledges.

And if the diſtrainer, and the plaintiff of the diſtreſs lead it away, then the conuſance thereof doth belong to the king's court, and ſo there is remedy by a writ of replegiari facias.

Nevertheleſs, for the releaſing of ſuch diſtreſſes, and for the haſtening of the right, *Randulf de Glanvile* ordained, that ſheriffs and hundredors ſhould take ſureties to purſue the plaints, and ſhould deliver the diſtreſſes, and ſhould hear and determine the plaints of tortious diſtreſſes, ſaving to the king the ſuit, as to the leading, *&c.*

Two things fall in theſe plaints; plaints of taking, and of detaining; whereof there are four degrees.

1 Where the taking is juſtifiable for lawful, and the detaining alſo, as for a debt due, or debt recovered.

2 Where both are wrongful (as) ſuch as are diſavowable both in the taking and detaining.

3 Where

3 Where the taking is lawful, as in damage feaſant, and the detaining tortious, as againſt ſufficient gages and pledges tendered.

4 Where the taking is tortious, as in a pound, and the detaining lawful, as for a debt confeſſed, and of no more have the ordinary judges conuſance; but in caſe where the plea begins by writ, conuſance ought to be made of the taking; of the detaining lieth remedy by an aſſize of novel diſſeiſin.

The taking and the detaining are ſometimes by parties known, and ſometimes by parties unknown, but although the perſons are known, nevertheleſs the names of the detainers ought to be known; and according to that the avowant, or the plaintiff or his bailiff if he be not preſent, ought to frame his declaration, and the plaint jointly againſt the perſons, and againſt the detainers, or ſeverally againſt one of them, and if againſt them both, then thus; *A.* wrongfully took, and cauſed to be taken, by ſuch a one known, or unknown, *&c.* and drove, and carried away, *&c.* and wrongfully doth detain from him, *&c.* againſt gages and pledges, and is yet ſeiſed thereof: or thus, wrongfully detained from ſuch a day till ſuch a day, that he delivered the ſame to the king's bailiff to his damage, *&c.* for theſe words (and yet is thereof ſeiſed) leaves it to them, that they cannot have ſight of the diſtreſs, and to thoſe who detain the diſtreſs by avowry of property.

CHAP. II.

SECT. 27.

Of contracts.

A contract is a ſpeech betwixt parties, that a thing which is not done be done, of which there are many kinds, whereof ſome are perpetual, as thoſe of matrimony; others are temporary, as of bailments, and leaſes; and one kind is mixt, as of exchanges, which ſometimes are for a time, and ſometimes for ever; and one ſpecial kind is an obligation.

And becauſe the law doth not intermeddle with every contract, we are to ſee who may contract, and of what things contracts may be; every one may make contracts with all perſons who is not forbidden by law.

The law forbiddeth that none contract with the enemies of the king of heaven, nor with the enemies of their earthly king; nor with any mortal offenders, nor with thoſe who are not of the chriſtian faith, nor with outlaws, nor waives, nor with thoſe who are known felons, nor excommunicated, nor with any who are in ward, if not to the profit of thoſe who are in ward; nor with deaf, nor ideots, nor madmen, nor appellees, nor perſons indicted of crime.

Of what thing a contract may be made.

Of all things not forbidden by law. The law forbiddeth that a man do not make a contract of the right of another, although he offend not; the law forbids contracts of uſury, diſſeiſin, hurting of the body, diſinheriting, and of other offence or vices.

Contracts are forbidden which are to the damage of the party gaining, by vice, by forbidding mixture of offence.

Contracts are vicious; 1 ſometimes by intermixture of offence; 2 ſometimes by intermixture of ill-belief; 3 ſometimes when they are made againſt that which is abſolutely forbidden; 4 and ſometimes by falſe ſuppoſition.

In the firſt caſe, as if I contract with you, that if I do not ſuch a thing, or ſuch a thing, that it ſhall be lawful for you or another to kill me, or to wound me, or impriſon me; or of uſury, that you ſhall not demand of *C.* for 100 *l.* 5 *l.* or other thing, *&c.*

In the ſecond, as if I give, or deliver, or leave a thing with you in hope that you will re-deliver the ſame to me again, and you detain this thing from me; or if I deviſe in my will, that you ſhall ſell ſome of my tenements to pay my debts, or to do other things with the money, and you being my executor, keep this money for ever to your own uſe, without doing of it;

or

or if I ſell, change, deliver a leaſe unto you to have ſo much of you at ſuch a time, and you keep from me that which you promiſed.

In the third caſe, as if I make any contract with thoſe with whom it is not lawful, nevertheleſs the contract of matrimony is not forbidden betwixt infants, although it be uſed to be, but in caſe of diſparagements; for diſparagement is an offence which is greatly forbidden.

The fourth caſe, as of charters, or other kinds of muniments; as it is of charters, and feoffments made in the ſeiſin of the donors, and of charters of quit-claim made out of the ſeiſin of thoſe who have them; for no charter, no rent, nor gift remaineth good for ever, if the donor be not ſeiſed at the time of the contract of two rights, of the right of poſſeſſion, and the right of property; and as a charter ſuppoſing a gift to be made without difference is void, ſo is the quit-claim of a thing whereof the maker of the deed is not in poſſeſſion of the thing quit-claimed.

And as the charters in the caſes aforeſaid are nothing worth, ſo alſo are the warranties, and whatſoever belongeth to ſuch eſtates, which are without force by virtue of ſuch falſe ſuppoſition.

On the other ſide, ſuppoſe that a ſingle deed be falſe, which teſtifieth the gift to be returned to the donor, or to his heirs, or in any

any other manner of condition; for a gift is always ſimple, and not of the ſame affection of the giver as to the right of the gift, that the thing given ſhould remain to the purchaſer without hope of reverſion.

A ſingle deed is a muniment without indenture, and therefore the law requireth, that eſcripts, teſtimonials of contracts conditional, ſuppoſing a reverſion be indented, and chirographed.

Contracts are ſuppoſed falſe in taking homage in deceit of the law; as if I take your homage for other ſervice than for the ſervice iſſuing out of the tenure *de Haubert*.

The law forbiddeth alſo, that none let nor take any land, nor fee, nor poſſeſſion, nor term of years to come above the term of forty years, nor that any contracts be made in fee farm for ever, nor for years, rendering more rent by the year than the fourth part of the value; nor that any be endowed of advowſons, nor any alienation of advowſons be made out of the blood, if not in perpetuity, or fee-ſimple; nor that an advowſon be partable amongſt parceners, but that it remain entirely to the next heir of the anceſtor, or that there be any leaſe for years left, or fee-tail thereof, for the advowſon of a church is ſo much in the ſpiritualty that there can be no alienation thereof, but in fee-ſimple.

In

In rights of contracts of bailment, and administration of other goods and monies, it is lawful for every one wisely to dispose of his goods to whom he will; and therefore it is advised that every one have bailiffs, or officers who he conceiveth do well understand the manor, and if he be endamaged by any servant, or other hurt, that it be accounted his own folly, seeing he took not sufficient surety of their faithfulness and discretion; and *e contra*, for against him who hath nothing the law giveth no recovery, nor other remedy but revenge; nevertheless if there be any such bailiffs who will not render a true account to his lord, he is chargeable thereunto by a writ of account, which is a mixt action if he have wherewith to justify himself; and if he be not distrainable, nor a freeholder, and deceiveth his lord, and will not render an account for such disobedience, he shall have the said action personal mixt.

And according to the change of the natures of the actions, the forms of the remedial writs are changed.

And although that such for their contempts are banished for a time, or for ever, yet is no man to be outlawed, or imprisoned for the same; but if any be in arrearages to his lord, ye are to distinguish thereof if he have any thing, whereof satisfaction may be made by judgment, to the example of a debt recovered, or otherwise.

CHAP.

CHAP. II.

SECT. 28.

Of villanage and niefty.

AN action of villanage and niefty is a mixt action, grounded upon a perſonal treſpaſs done to another, when a man proſecutes a freeman to enſlave his blood.

This action is a mixt action in favour of liberty, for very ſeldom will any one depart from his lord's manor, if he claim not himſelf to be a freeman.

This action hath introduction, by ſummons, and attachments of the lands.

A waive is nothing but a villaineſs, and notwithſtanding that according to the law of nature all creatures ought to be free, nevertheleſs by conſtitution, and by the deeds of men, (are) they and other creatures enſlaved, as it is of beaſts in parks, fiſhes in ponds, and birds in cages.

The villanage of man is a ſubjection of ſuch great antiquity, that by the memory of man no free ſtock can be found thereof; which ſlavery according to ſome is the curſe which *Noah* gave to *Caanan* the ſon of *Cham* his ſon, and to his iſſue, and according to others of the *Philiſtines*, who became ſlaves at the battle which was betwixt *David* and the children of *Iſrael* of the one party, and *Goliah* the Philiſtine on the other part.

And

And as other creatures are kept in inclosures, so are villains kept to guard the possessions of their lords, and from thence are said regardants; and so men are villains by the law of God, by the law of man, and by the canon law.

From *Shem* and *Japhet* come the *gentile* christains, and from those from *Cham*, the villains which the christians may give away, or sell as they do other chattels, but not devise by will, because they are astriers, who are annexed to the frank-tenement, and of them there are many others.

Those are villains who are begot of villains and niefs in servitude, whether born in matrimony or out of matrimony; those also are villains who are begotten of villains, and born of free women in matrimony, and those are villains who are begotten of a freeman and a nief, and born out of matrimony.

The other manner of villains are those who are adjudged villains by a writ of *nativo habendo*, and their issue after them.

Villains become free many ways; some by baptism, as those *Saracens* who are taken by christians, or bought and brought to christianity by grace.

Some became free by the Pope, as it is of those villains who by bishops are ordained into orders of deacon, and above; but notwithstanding the same a man shall not lose his right thereby who will sue for them.

On

On the other part villains become freemen if their lords grant, or give unto them any free eſtate of inheritance to deſcend to their heirs; or if the lord take their homage for their land, or if the lord eject them out of their fees and give them ſuſtenance; or if he put them in a common priſon if it be not for crime.

A woman after ſhe is put in poſſeſſion by her lord, is never again to be challenged as a nief, notwithſtanding ſhe be ſold.

And if the lord ſuffer his villain to anſwer in judgment without him in a perſonal action, or to be a juror amongſt freemen, as a freeman knowingly, and without the lord's claim; the villain hath this plea to the villanage if he return not of his own accord.

Alſo a villain becomes free through the lord's default in a writ of *nativo habendo*, as by his non-ſuit in the writ.

Alſo by proof of a free ſtock, or to have been born of free parents.

Alſo by the lord's grant in court, and alſo by preſcription; alſo by default of proof, and alſo by the lord's negligence, as by the remaining of the villain within a city, or upon the king's demeſnes for a whole year; or if wittingly he ſuffer his villain to be a ſuitor in another court, or to be ſworn in aſſize, or elſewhere amongſt freemen; if a villain depart from his lord claiming free-eſtate, ſo that he cannot

not ſeiſe him within the manor within the year, or out of his fee, nor after his writ of *nativo habend.* brought, it belongeth to the lord that he bring again that action which is *vice-countiel*, and pleadable in the county, by ſummons and diſtreſſes of his lands; for the law requireth that he do right and uſe not force.

The parties being brought to judgment in the county court, and the action being declared in, the defendant by way of exception may plead that he is frank, and becauſe that a free eſtate is of a higher nature than villanage; therefore becauſe the ſheriff hath not power to try ſo high a plea by the writ of *nativo habendo*, thoſe writs and ſuch pleas are ſuſpendable till the coming of the juſtices in Eyre into thoſe parts; but if the king command not to the contrary, thoſe pleas are not adjournable but from one county court to another.

Note that all villains are not ſlaves, for ſlaves are ſaid regardant, as before; they can purchaſe nothing but to the lord's uſe, they know not in the evening what ſervice they ſhall do in the morning, nor any certainty of their ſervices; the lords may fetter, impriſon, beat or chaſtiſe thoſe at their pleaſures, ſaving to them their lives and members, theſe may not fly, or run from their lords ſo long as they find them wherewith to live; nor is it lawful for others to receive them without their lords

conſent;

conſent; thoſe can have no manner of action againſt any man without their lords, but in caſe of felony; and if thoſe ſlaves hold lands of their lords, it is intended that they hold them from day to day at their lords will, and not by any certain ſervices.

*Villains are tillers of lands, dwelling in upland villages, for of *vill* cometh villain, of borough *burgeſs*, and of *city* citizen; and of villains mention is made in the great charter of liberties, where it is ſaid, that a villain be not ſo grievouſly amerced that his tillage be not ſaved to him; but the ſtatute maketh no mention of ſlaves, becauſe they have nothing of their own to loſe.

And of villains are there tillages called villanages.

And note, that thoſe who are free, and quit of all ſervitude, become ſervile by contracts made betwixt the lords and the tenants.

And there are many manners of contracts of fees, as of gift, of rent, of exchange, and leaſe, which all may make for a time, or for ever, and quitment without obligation, and charge of ſervice, and with charge.

And theſe contracts (as all other) are made by writings, charters, and muniments, by ſolemn witneſſes, according to the example of contracts of marriages, which ought to be a pattern to all other contracts;

* Note, by villains in this place is meant copyholders.

according to which example were the firſt contracts made by the firſt conquerors, when the earls were enfeoffed of the earldoms, barons of the baronies, knights of knights fees, ſerjeants of ſerjeanties, villains of villanages, burgeſſes and merchants of boroughs, whereof ſome received their lands without obligation or ſervice, or in frankalmoign; ſome to hold by homage and by ſervice, for defence of the realm, and ſome by villain cuſtoms, as to plough the lords lands, to reap, cut and carry, his corn, or hay, or ſuch manner of ſervice, without giving of any wages, whereof many fines were levied of ſuch ſervices, which make mention of the doing of theſe baſe ſervices, as well as of other more gentile ſervices; and although ſo it be, that the people have no charters, deeds, nor muniments of their lands; nevertheleſs if they were ejected, or put out of their poſſeſſions wrongfully, by bringing an aſſize of novel diſſeiſin, they might be reſtored to their eſtates as before, becauſe they could aver, that they knew the certainty of their ſervices, and works by the year, as thoſe whoſe anceſtors before them were aſtraies for a long time, in caſe diſſeiſors were not their lords.

And thereupon St. *Edward* in his time, cauſed enquiry to be made of all ſuch who held, and did to him ſuch ſervices as ploughing his lands, *&c.* beſides their lawful cuſtoms.

And

And afterwards the people leſs fearing to offend than they ought, many of theſe villains by wrongful diſtreſſes were forced to do their lord the ſervice of rechat of blood, and many other voluntary cuſtoms, to bring them in ſervitude under their power for which their remedy was a writ of *ne injuſte vexes.*

CHAP. II.

SECT. 29.

Of ſummons.

THIS chapter maketh mention of ſpecial ſummons, to make a difference from general ſummons, where all freeholders and others ought to come according to the nature of the cry whereof, and every one may ſummon by a common cry; but of this ſummons this chapter maketh not mention.

A ſpecial ſummons is a friendly admonition of an amendment of an offence, or wrong; and becauſe none is tied to anſwer to any action real or mixt before a ſummons, therefore it is to ſee;

1 Who have authority to ſummon.
2 Who are ſummonable.
3 In what place he is ſummonable.
4 How far one is ſummonable.
5 At whoſe charges.
6 How often.

7 Who may be ſummoners.
8 What is a reaſonable ſummons.

1 All who have juriſdiction, have authority to ſummon.

2 All thoſe who are not forbidden by law are ſummonable, none is to be ſummoned for a perſonal offence, nor any one who is not a freeholder.

3 A man is not ſumonable in all places, for no man is ſummonable, nor bounden to receive ſummons out of the fee of the party who cauſeth the ſummons, nor elſewhere but in the manor appendant to ſuch a court where he ought to anſwer, nor in all places of the manor, but only at the tenement in demand.

4 How far one is ſummonable; not out of the fee of the court where one is to anſwer.

5 At whoſe charges? At the charges of thoſe who are the firſt cauſers of the ſummons, except in juries and enqueſts taken *ex officio*; for no freeman is compelable to travel, and appear in judgments at his own charges, notwithſtanding that the law requireth that every tenant obey the ſummons of his lord.

6 How often one is ſummonable; but once in one cauſe, nevertheleſs re-ſummoned holdeth place in ſome caſe.

7 Who may and ought to be ſummoners; no man is compellable to be a ſummoner if he will not agree to it; nevertheleſs all thoſe may be ſummoners who will, that are not

forbidden by the law. Women, nor villains, nor infants, nor any infamous perſon, nor any one who is not a freeholder cannot be a ſummoner.

8 It is a reaſonable ſummons, when it is teſtified by two loyal free witneſſes, neighbours to the perſon, or to the houſe, or tenement contained in the writ, with warning given of the day, place, party, judge of the cauſe, and a reaſonable reſpite, at leaſt of fifteen days to provide his anſwer, and to appear in judgment. In juries nevertheleſs, nor enqueſts there need not be ſo full time or reſpite given.

CHAP. II.

SECT. 30.

Of eſſoins.

ESSOIN is an excuſe of a default by any hindrance in coming to the court, and lieth as well for the plaintiff as for the defendant.

The law of every eſſoin is, that the cauſe of the hindrance be enrolled with the name of the eſſoiner, ſo that if the adverſe party, or his attorney, or eſſoiner, will traverſe the cauſe, he is to be received ſo to do, that if it be found falſe, then that the eſſoin be turned to a default.

All thoſe may be eſſoined who are not forbidden by law; no defendant in perſonal

actions, nor any after default can be essoined, nor any present in court; nor doth essoin lye in a *scire facias*, nor in a *venire facias*, nor in a *recordari facias loquelam*, nor in admeasurement of pasture, nor after the parties have joined issue in judgment though the jury appear not; nor in case where the plaintiff hath not found surety to pursue his action, nor where one hath attorney in court, if both be not essoined, nor where the summons is not testified; nor after an essoin not warranted, nor to him who was not named in the writ, or in the plaint, except in warranties; nor any one who is re-summoned in mortd'ancestor and darrein presentment, nor when the day is to come, nor where the essoiner cometh too late, nor any one whose adversary is dead, or any of his parceners, nor he who is adjourned from day to day, nor the king's officer as officer, nor he to whom it is commanded that he appear if he please.

No essoin is justifiable if it be not orderly cast, nor is it allowed to infants within age, nor to any who is in custody, nor to many having one right, if the cause be not divers.

All may be essoiners whom the law forbiddeth not; it is forbidden to women, to infants, to villains and to all who are in custody; to madmen, to ideots, to excommunicated persons, to the judges, and to the parties in the cause, to be essoiners at

at other times not warranted, or attainted of false delays; to criminal persons, and to those who are not of the christian faith, or in the king's allegiance, it is forbidden that they be essoiners.

There are chiefly two kinds of essoins; the one of the king's service, the other of hindrance.

The first is dividable, either into the service of the king of heaven, or of the king on earth; of the king of heaven in three manners.

1 Either for the general passage of all to the land of, *&c.* ——————————————————————————and this essoin is not otherwise adjournable, but that the parties go without day, and are to appear again by re-summons of the plaintiffs, at the return of the defendant. This essoin is not allowable to plaintiffs, nor to the defendant reasonably summoned before his going from his house in a personal action, nor in other, but in a plea which toucheth inheritance; nor but in a writ of right patent, but not of dower, nor of burgage.

The other essoin of the service of the king of heaven, is of a common pilgrimage beyond sea, towards the holy land, and this lasts for a year, this holds not but according as the other.

The third, of a pilgrimage beyond sea, as to *Rome*, or to Saint *James de compostella*, and take place for half a year, and

these essoins are to appear the next courts following the terms adjourned.

After re-summons holdeth place the common essoin *de mal venire*, and also after the term of adjournment; but this common essoin never holds place before the essoins before said.

The essoin of the king on earth's service is in two manners.

1 The one is of those who serve as soldiers, as messengers, or as ministers; and this essoin is not respited but from court to court, or the common day, to the example of a common essoin, if it be not warranted at the next court by the king's writ, it is to be turned to a default.

2 The other is of those who serve the king by tenure of their land for the defence of the realm, and he hath no day; but the plaintiff is without day, and the plea is to be recontinued in the same estate when his adversary shall be returned.

These latter essoins are allowable in pleas, summonable to plaintiffs and defendants, except in dower *unde nihil habet*, *quare impedit*, darrein presentment; nor to women, nor to infants, nor to ideots, nor to deaf, nor to dumb, nor madmen, nor to any in custody, nor to any who is not free of himself, nor to any attorney, as attorney, nor where the essoiner acknowledgeth the cause in judgment to be false, nor after any *cape*, nor after distress in the land.

After

After the essoins of the king's service lieth an essoin of *malo veniendi*, but not *e contra*.

The essoin of disturbance or hindrance is dividable, either of sickness, or of some other hindrance, as of those who coming towards the court are taken by the king's enemies, and so hindred; or by waters, bridges, or enemies discovered, or by tempests, or other reasonable disturbance, so that they have not power to appear at the day.

The essoin of hindrance and sickness is dividable, either of languishing which is called *de malo lecti*, and that holdeth place for a year; or of sickness in the journey, and that holds not but to the example of a common essoin; in these essoins of hinderance are essoins *de malo veniendi*.

This essoin lieth after every summons, and general re-summons upon pleas, except to jurors, and those who are summoned for the commonwealth.

But of adjournments it is to distinguish; for in the Eyre of justices, the adjournment is for three days, or four at the most, or less according as the places are near, or contain, and to this essoin is respited fifteen days at the least.

The essoin of sickness in passage lieth before the essoin *de malo lecti*, and also after the year of the languishing, and it lieth before appearance, and after appearance, except

cept in four aſſizes; and where it lieth in actions it holdeth in warranties.

This common eſſoin is not allowable in the caſes aforeſaid, but once after the parties have joined iſſue, nor after the parties have agreed to appear without eſſoin, nor where a biſhop is commanded that he have or cauſe ſuch a perſon to appear, nor there where many claim by one right, or are tenants of the ſame right, nor to a man and his wife, nor to all the parceners; but if a man dieth without heir after the writ purchaſed and brought, the writ is thereby abatable, becauſe at the day of the date the plaintiff had no action againſt the other parceners which are alive, as to that of the party.

This common eſſoin lieth as well for infants where they are impleaded of their lands, as for men of full age.

And as the ſame is allowed to the tenant, ſo is it warranted where no ſickneſs is adjudged; this eſſoin is allowable from day to day, according to the common adjournments in writs of right, till the ſickneſs be judged, if the tenant riſe not before from his ſickneſs; nevertheleſs none can do it in ſuch a caſe if not with the plaintiff's leave, or by the command of the king, if the plaintiff will not give him leave.

This eſſoin holdeth in the writ of droit patent ſent to the lord of the manor, and in a writ of droit cloſe of lands holden of

the

the king in *capite*, and in the writ of customs and services, after that the deforceor hath pleaded, and said that the battle or the grand assize may be joined.

The essoin *de malo lecti* is in court for two years when the sickness turns to weakness; this essoin lieth not for the plaintiff; and after the sickness adjudged, it is adjournable by a year of respite to the court of London.

Weakness lieth not in any writ of right after appearance, but where battle may be joined, or the grand assize.

This essoin *de malo lecti* was never allowable to any attorney, nor to any but those who had a warrant before the common essoin cast by the tenant, nor to any after the weakness adjudged, nor without rising; nor in *justicies*, nor in the writs *de quo-jure*, nor *de rationabilibus divisis*, nor *quo warranto*, nor customs and services before that the court be certified that battle might be joined, or the grand assize.

This essoin of *de malo veniendi* is called *de malo villæ*, and this lieth in case where one appeareth the first day in judgment, and is suddenly taken with sickness in the town, that he cannot the next day appear in court.

This essoin may be cast the second day by one, the third day by another, and the fourth day by a third; in which case

the judge ought to receive the atturnies of thoſe who are ſick, but this eſſoin lieth not but there where the eſſoin *de malo lecti* lieth.

CHAP. II.

SECT. 31.

Of attornies.

BEFORE a plea put into court by eſſoins, by attachment, or by appearance of the parties, none is to be received by attorney, no more than a plea is removeable out of court into a higher court, where the plaint or the writ is not brought; nor any is to be received by attorney in a plea which was, nor in a plea which ſhall be, but only in a plea which is pendant in the county court, or elſewhere; or is brought by the king's writ, and this plea be afterwards removed into a higher court; by this removing the attorney is not removed, for no attorney is removable unleſs he whoſe attorney he is, come into the court in proper perſon and remove him, if not in caſe where one hath general attorney, for general attornies may appoint ſpecial, and remove them; nor any can receive

ceive attornies after the plea brought but the king, or other warranted by a ſpecial writ, if not in the preſence of the parties.

All may be attornies which the law will permit; women may not be attornies, nor infants, nor villains, nor any who are in cuſtody, or any other who is not free of himſelf, nor any who is criminous, nor any who are not ſworn to the king, nor any in any perſonal action, nor in an account, nor in *nativo habendo*; plaintiffs, notwithſtanding they have attornies, in perſonal actions are not to appear, nor anſwer in judgment by no attorney, but he diſſeiſeth his client when he doth it.

The

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Of rape.
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Of mayhem and wounding.
Juramentum duelli.
The order of battle.
Exception of perſonal treſpaſs.
Of purpreſtures.

Of

Of treasure trove.
Of wrecks.
Of usury.
Of driving.
Of obligation.
Of attaint.
Of oaths.
Homage.
Fealty annexed to homage.
Common oaths.
Of final accords.

CHAP.

CHAP. III.

SECT. I.

Of exceptions.

IT behoveth the defendant to anſwer the plaintiff's declaration, and becauſe the people commonly know not all the exceptions in pleadings; countors are neceſſary, who know how to advance and defend their clients cauſes according to the rules of law, and the cuſtoms of the realm; and the more needful are they to defend them in indictments, and appeals of felony, than in perſonal or venial cauſes; and the better to help our memory, which every day inclineth to forgetfulneſs, it is neceſſary to ſhew what is an exception, and the diviſion of it, and the order of excepting, or pleading; for ſome account them guilty who plead not, or plead ill, or not ſufficiently; for example, if any one vouch one to warranty, and judgment paſs (if he tell not the year, or before what judges the judgment paſſed) it is as if he had ſaid nothing; and ſo of other caſes, and although a plea be requiſite, nevertheleſs every one is not received to plead; for ſome are admitted

admitted to plead without tutors in all actions, and ſome not, but in felonies.

Every one may anſwer without a tutor who is not forbidden by the law.

The law forbiddeth married women to anſwer without their huſbands, but then we are to put a difference in the caſes; for if ſhe be within the age of one and twenty years, ſhe is not admitted to plead in any caſe without her huſband, but in caſe where her diſinheriting, or that which doth amount to as much, doth appear by the malice, or negligence of her husband; and if ſhe be of full age, then ſhe ſhall ſo anſwer alone in caſes of death and felony; and ſo it is of men within the order of religion, and of villains, and of all thoſe who are in cuſtody, and are not delivered.

CHAP. III.

SECT. 2.

What exception is, and the order of exception, or plea.

A Plea of exception is a thing alledged for anſwer, either to delay or bar the action.

And there are two manner of exceptions, dilatories, and peremptories.

The order to plead is ſuch, that the peremptory plea is in the higheſt degree, for the dilatory may have a recourſe to the peremp-

tory, but not *e contra.* And of dilatories ſome are principal, and ſome are ſecondary, and from the ſecondaries there is no recourſe to the principals, and according to their degrees are they put in, partly to help our remembrance.

And ſome exceptions are in counts, in replications, and rejoinders, and ſo forth, until the truth be cleared in the proceedings of the pleas, whereby one may ſurely come to give clear judgments.

Voucher to warranty lieth not in perſonal actions, although that averments by record, and muniments, and witneſſes availeth.

CHAP. III.

SECT. 3.

Exceptions of dilatories.

THERE are many dilatory exceptions, whereof the firſt is to the judge, and that many ways; one unto the power of the judge, and that may be in two kinds, by reaſon of the two kinds of juriſdictions, or becauſe the king or his judge delegate hath no power, or conuſance in the cauſe, as it is of the perſon of a clerk, by reaſon of the privileges of the church; or becauſe the ordinary judge hath not power or conuſance of a thing done out of his juriſdiction, nor any

any one within a franchiſe of a thing done in guildable, nor kings, nor thoſe of one country, or of one land, of things done in another land or country.

CHAP. III.

SECT. 4.

Of exception of clergy.

FOR the privilege of clergy; as if a clerk be ordered in court defore a lay judge to anſwer to an action for a perſonal treſpaſs, and eſpecially in a caſe criminal and mortal plead that he is a clerk, the judge hath no further conuſance of the cauſe, for the church is ſo enfranchiſed, that no lay judge can have juriſdiction over a clerk, though the clerk will acknowledge him for his judge; and in ſuch a caſe he is without delay to be delivered to his ordinary.

Nevertheleſs, to give actions to plaintiffs againſt the acceſſaries in appeals and indictments, it belongeth to the judge *ex officio* to enquire by the oaths of honeſt men, in the preſence of the clerk, whether he be guilty or not, and if he be guilty thereof, then he is without delay to be delivered to his ordinary, and the plaintiff ſhall ſue againſt the acceſſaries in the king's court,

and in the ſpiritual court againſt the clerk, and the clerk after his due purgation made, ſhall without delay have all his lands and moveables delivered to him.

CHAP. III.

SECT. 5.

Replication of bigamy.

THE exception of clergy is ſometimes counter-pleadable by a replication of bigamy in this manner:

Sir, he ought not to enjoy the benefit of this privilege, for he hath forfeited the ſame by the ſin of bigamy, as he who hath married a widow, or many wives; and note that matrimony is the lawful order of joining together of a chriſtian man and woman by their aſſents; and as of the deity and humanity of Chriſt there is made an undiſſolveable unity; ſo was matrimony, and according to ſuch unity was ſuch coupling found to be, and therefore none can remain in that unity who takes to himſelf a plurality; and of a plurality ariſeth this offence of bigamy, which offence draweth clerks nearer the lay power.

And note that bigamy may be two ways; one by a plurality of wives, as he who marrieth two wives or more, the one after

after the death of the other, or outliving the other; the other is plurality of husbands as well as wives, as it is of a widow who suffereth herself to be married to another man, whether her widowhood came by the death of her husband, or by divorce; and because it belongeth to say in what point a clerk is bigamus, the bigamy is triable in the lay court; if nevertheless the jury doubt thereof, then the ordinary is to certify the same at the command of the king, as in the case of matrimony when it is denied. On the other side, a clerk is incounterable by other replications, as he is for being a murderer, or a notorious liar, or of such a condition as the church is not to protect him against the king's peace.

CHAP. III.

SECT. 6.

Exception to the power of the judge.

AGAINST the power of the judge the defendant may help himself by other dilatory pleas in this manner; Sir, I demand the sight and the hearing of the commission, whereby you claim jurisdiction over me; and if the judge do not deny it, or cannot shew it (notwithstanding that no judge delegate is compellable to shew his power), yet may the party plead thus; Sir, I appeal from this commission, because it

maketh no mention of the cauſe for which I was brought to judgment, or not of that point; or becauſe you have no conuſance in ſuch a point; or becauſe it is vicious; and that may be divers ways, as if it be not ſealed with the king's ſeal of the chancery; for none is tied to yield obedience according to the laws and cuſtoms of the realm to the king's privy ſeal, or to the ſeal of the Exchequer, nor unto any other ſeal, but only to the ſeal which is aſſigned to be known of the common people, and eſpecially in juriſdictions and original writs, if not for the king only. Or it may be vicious becauſe the ſeal is counterfeited or falſified, or becauſe the king is not named in the writ, he not being out of the kingdom, nor in ward; or becauſe the writ containeth ſummons in the action where it is perſonal, or attachment where the action is mixt or real, or becauſe the ſeal is not faſtened to the parchment, but one may remove it, and take it from it at his pleaſure; or becauſe the writ was brought too late, or too ſoon; or becauſe it hath raſure, or interlining, and diverſity of hands, and of words, or falſe Latin; or becauſe the writ is written upon paper, or parchment which is forbidden; or for default found in the writ, as the omiſſion or tranſpoſition of a word, ſyllable or clauſe, as it is of abatable writs; or becauſe the king died before the writ was brought, or becauſe the writ is falſe in the day of the date,

date, or becauſe the commiſſion requireth the aſſociation of one who is not preſent; or becauſe the writ was never ſealed, or becauſe the fact was not done within his juriſdiction, or in a place not there determinable, or becauſe the judge hath not power or conuſance either of the quality or the quantity of the thing.

CHAP. III.

SECT. 7.

Exception to the perſon of the judge.

ALthough the writ be good, and the power be ſufficient, yet there holds dilatory exceptions to the perſon of the judge (as it is ſaid) of ſuch perſons who cannot be judges.

CHAP. III.

SECT. 8.

Exception to the time.

OTHER dilatories there are of time, of place, of hours, of manners, *&c.*

And note, there are three manner of times exempted from pleas, in which no parties ſit in courts to give judgments, whereof

two are by law, and the other at the will of the king.

One time containeth two months, *viz.* *Auguſt* and *September*, which are aſſigned to gather in the fruits of corn, *&c.*

The other times containeth the feaſts, and the ſundays, which are appointed feſtivals for the honouring of God, and the ſaints, which feaſts are theſe:

1 The day of the birth of Chriſt, of St. *Stephen*, of St. *Silveſter*, and the epiphany, and the purification of our lady, Eaſter week, of the rogations, which contain three days; of the aſcenſion, of Pentecoſt, of the nativity of St. *John* the baptiſt, of the twelve apoſtles, of St. *Lawrence*, and of the aſſumption of the mother of God, and her nativity, of St. *Michael*, and of All Saints, and of St. *Martin*, with all ſuch feaſts which all biſhops hold feſtivals in their biſhopricks, for that they are canonized; beſides theſe the days of relicks, of the annunciation of the mother of God, and of her conception, and of the invention of the croſs.

And note, that whereas God commanded to keep holy the ſabbath day; it was ordained, after the reſurrection, that we keep holy the ſabbath days.

The third time is forbidden by the king's proclamation, of hours may ariſe dilatories, for after the hour of noon, or in the night, no plea is to be holden.

CHAP. III.

SECT. 9.

Exception of the place.

OF the manner arise dilatory, for in riding, nor in walking, nor in taverns, nor elsewhere, but in known places for a consistory can any court be holden.

CHAP. III.

SECT. 10.

Exception to the person of the plaintiff.

OTHER exceptions dilatories arise from the persons of some plaintiffs, as it is of those persons who are rebukeable of accusations. Other exceptions dilatories rise from the persons of the pleaders, or of the attornies, or of the essoiners, for none can do that by his attorney which himself cannot do, nor can any be an essoiner, attorney, or pleader who may not be a plaintiff.

CHAP. III.

SECT. II.

Exception of perſon; and of his cuſtody.

OR he may take exception againſt his own perſon, and ſay that he is not within the king's power, or if he be impriſoned for a greater offence, or appealed or indicted of crime, or of a higher crime; or he may ſay, that he is not bound to anſwer thereunto, for as much as he is not brought to judgment by a right courſe, which willeth that no man may be attached by his body, when he is diſtrainable by his lands or other goods, if not for a perſonal offence.

Or he may ſay, that he is not tied to anſwer to any action which toucheth loſs of life or member, or right of property, until he be of the full age of one and twenty years or more; and there are other dilatories of the perſons of the anſwerers, which appear before.

CHAP. III.

SECT. 12.

Exception of ſummons.

IN pleas of ſummons he may ſay, he ought not to anſwer, becauſe the plaintiff holdeth no ſuit of diſtreſs, nor hath any other manner of proof preſent; or becauſe the plaintiff hath not found ſureties to purſue his plaint, or becauſe he was not ſummoned, or not reaſonably ſummoned, or that he received the ſummons by no freeman, or but by one freeman; or becauſe he was ſummoned too late, or becauſe he was never ſummoned, what thing to anſwer to, or becauſe he was not ſummoned againſt the plaintiff.

CHAP. III.

SECT. 13.

Exceptions of vicious counts.

AS writs which are vicious are abateable, ſo alſo are vicious appeals; as if the appeals be not brought within the year after the felony done, or not before the coroner, or not in the county where the offence was done, or not in a right place, or

for

for variance, or for omiſſion, or interruption, or becauſe the plaintiff is barred againſt others in the ſame appeal.

Sometimes it happeneth that the thing which is robbed or ſtolen is found in the poſſeſſion of a true man, againſt whom the owner of the property, or of the poſſeſſion frameth his appeal, as he who is a robber of another, in which caſe there is a difference; for if it be found that ſuch a thing was given, ſold, or delivered to him without colluſion, in ſuch caſe the poſſeſſor is acquitted, or at leaſt bailable until the next coming of the juſtices; and when the juſtices come, the firſt poſſeſſor thereof is to be arrained, and he may ſhew how it came to him; nevertheleſs if he would vouch one to warrant it he cannot, nor deny the title of his poſſeſſion, but in the name of voucher he may ſay, that it came to him by lawful title, as that he bought it in ſuch a market, or in ſuch a place, without mentioning of whom; and the ſheriff is thereupon to cauſe a jury to be impanelled, and if the anſwer be found true, then he is acquitted, and if not, then to be condemned as before, as if the plaintiff had proved the felony.

And if any one appear, and juſtify the thing to be his, he is not to be received as a party, but the cauſe is firſt to be tried betwixt the two firſt, and afterwards he may make the eſtranger a party if he will; and if

if the caſe be that the buying was within a place within a franchiſe, and the ſheriff return, that he cannot execute the writ by reaſon of the franchiſe of ſuch a man, or of ſuch a place; in ſuch caſe the ſheriff is to be commanded that he forbear not by reaſon of the franchiſe, but that he enter and execute the writ.

And if the poſſeſſor ſaith, that he came to the thing from a man certain, and he be preſent, and will maintain the ſame without colluſion, he is to be admitted thereunto, and the other is to be diſcharged; and if he deny the contract, this affirmative, and this negative are triable by battle or jury; nevertheleſs at the king's ſuit the poſſeſſor ought to make title to the poſſeſſion, or clear himſelf thereof; for two things are neceſſary, conſcience for us, and fame againſt others.

And that which is ſaid of making of title to the poſſeſſion of things, in caſe where a falſe writ, or falſe money, or larceny, or thing loſt, or eſtray, or other hurt is found at the king's ſuit, although that the laſt poſſeſſor acquit himſelf of the felony; if the plaintiff nevertheleſs prove the thing to be his, as of his poſſeſſion, or ſtolen from another, or otherwiſe loſt, the law is, that he recover the thing without any payment for it.

Or he may have exception dilatory to a vicious deed, for variance betwixt the words of the writ and the nature of the action, and the count, as if he have omit-

ted

ted to charge me, or if he charge that in the count which was not to be in that action, as felony in a venial action.

And as the defendant hath a dilatory exception to abate a vicious count, in like manner hath the plaintiff a replication againſt the defendant upon a faulty anſwer; but becauſe none is to be judged for not anſwering in appeals of felony, it is ſufficient for every one to deny the felony generally, though he anſwer not particularly to every word mentioned in the appeal.

And in caſes venials, where the defendants ſay nothing in excuſe of that which is offered againſt them in judgment, they are to be adjudged and condemned as not anſwering at all; in the ſame manner it is where one anſwereth not duly, or inſufficiently.

CHAP. III.

SECT. 14.

Exception to approvers.

TO an approver one may thus anſwer; Sir, I am a true man, ſworn to the king, and within a frank-pledge; and this approver is a felon attainted by his own confeſſion, and out of the king's protection, and by conſequence out of the king's peace, whereby

whereby he hath loſt his free voice, and loſt every right, and every action, ſo as he is not to be admitted in any action, no more than a man who is outlawed by judgment.

Or he may plead, that he ought not to anſwer him, becauſe he did not appeal him in his firſt appeal, or not before the coroners, and if the approver cannot help himſelf by this replication, as to ſay, that he is not any way out of the king's protection; the defendant is bound to anſwer him, but he is not to be delivered to the free-pledges where he is in the decennary; or to other main-priſors until he be appealed or indicted.

CHAP. III.

SECT. 15.

Exceptions of indictments.

THESE exceptions hold to indictments; Sir, I demand ſight of the indictment, whereby I may take exceptions againſt the perſons of the indictors, or to the form of the indictment, for no villain can indict any man.

Or if the indictment be not made by the whole dozein of freemen, or by others who cannot indict any man.

Or if the indictment be not ſealed with the ſeals of the twelve jurors, or that it is not the record of judges authoriſed thereunto;

unto; or if the indictment hath not been within the year, or by people of credit, and of good fame, no man is bound to anſwer to ſuch an indictment.

Nor if the indictment hath not been made within the neighbourhood of the ſame county, alſo if the indictment be general, for a general ſlander defameth no man, nor is he compelled to anſwer thereunto; as if the indictment be, ſuch a one is a murderer or a thief, or wicked, without alledging any particular offence therein, for to the common fame of the people an indictment ought to give no credit or belief.

Or he may ſay, that the juſtices went the Eyre after the felony done, where nothing was moved of this felony.

CHAP. III.

SECT. 16.

An anſwer to treaſon.

Darling here denies all treaſons and felonies, and whatſoever is againſt the king's peace.

And as to the conſideration he may ſay thus; Sir, notwithſtanding the joint alliance betwixt us by homage ſometimes before this time, nevertheleſs when he counted that I ſhould commit this treaſon, I had yielded up

up to him all the lands which I held of him, or I loſt them by judgment, or by diſſeiſin, which the plaintiff did to me, or he appointed them to come to others; in which caſe the felony is barred, and the plaintiff is condemnable.

And as to the conſideration of preſent fealty he may ſay, that this alliance the plaintiff forfeited againſt him in ſuch a point, or ſuch a point; ſuch fealty iſſued out of ſuch lands whereof the defendant was not then tenant, neither in demeſne nor in ſervice.

And to the alliance of curteſy he may ſay, that ſuch benefit was not to continue but until a time paſt before the time named in the appeal, for afterwards he paid him nothing of ſuch penſion, or other curteſy but by judgment had againſt him, and in deſpite of him; or thus, before the time named in the appeal he yielded up to him his deed of the penſion, or releaſed the ſame unto him, or quit-claimed the ſame whereby the alliance was deſtroyed.

L CHAP.

CHAP. III.

SECT. 17.

Burning.

TO burning he may ſay, that the miſchief came by miſchance, and not of a premeditated felon.

CHAP. III.

SECT. 18.

Murder.

TO an appeal of murder he may plead, that the action belongeth not to ſuch women as the wife of the plaintiff, becauſe he was not killed in her arms, or in her ſeiſin. Or thus, Sir, the plaintiff is to have no action, for as much as there is one nearer of blood who hath brought his appeal, and is a perſon of ability ſo to do; or he may ſay, that he is not bounden to anſwer in *England* unto an act done out of the realm, if the thing concern not the king's right, as his perſon, or his inheritance; nor in a privileged place where the king's writ runneth not of an act done in a foreign place, nor *e contra* in a franchiſe, of an act done in guildable; or he may ſay, that he did it not felonioufly, but by miſchance, or by a lawful judgment; or thus, not againſt the peace as a fugitive, or as a known felon, or as one who was not within allegiance to the king at the time of the killing.

CHAP.

CHAP. III.

SECT 19.

Robbery or larceny.

TO an appeal of robbery or of larceny he may plead, that he wrongfully bringeth this appeal, for as much as the plaintiff brought an action of treſpaſs againſt the ſame perſons of the ſame before ſuch judges; and if any one would cover his larceny by colour of avowry for an eſtray, or a waif, in ſuch caſe it behoveth that he ſhew forth a title allowable for ſuch a franchiſe; but this exception is counter-pleadable by his peremptory replication; Sir, ſuch avowry ought not to be of any force, becauſe he preſently carried away the eſtray, or waif ſo found, or changed it, or ſold it, or killed it, or put it out of the view, or from the knowledge of the neighbourhood; whereas he ought to have publickly cried it in three markets and monaſteries next adjoining, and keep it in a common place for a whole year.

To the exception of diſtreſs holds this replication; Sir, ſuch avowry ought not avail him, becauſe he was not a known bailiff in ſuch a hundred; or becauſe he did not any thing in the manner of a diſtreſs, as not in a due time, nor had any warrant, but took it in the night time, or in ſuch other manner feloniouſly robbed him, and ſtole, &c. and in the like manner may a replication hold againſt a robbery made by colour of diſſeiſin.

CHAP. III.

SECT. 20.

Of burglary.

TO burglary he may ſay, that he entred into the tenements without doing any felony, and not againſt the peace, as into his own demeſne and freehold.

CHAP. III.

SECT. 21.

Of rape.

IN appeal of rape he may deny the felony, and ſay that he raviſhed not her againſt her will, but that ſhe aſſented, and that appeareth becauſe ſhe conceived by him at the ſame time, and there is no preſumption that ſhe was raviſhed againſt her will by fouling of her garments, nor ſhedding of blood, nor hue and cry made, or other manner of violence offered.

CHAP. III.

SECT. 22.

Of impriſonment.

TO the appeal of impriſonment he may ſay, that he did it by force of a rightful judgment of ſuch a judge; but to that plea is this replication good, that after

after there came a warrant to him to deliver him, he kept him in priſon for the time named in the appeal.

CHAP. III.

SECT. 23.

Of mayhem and wounding.

IN mayhem he may demand the view thereof, for he cannot lawfully complain when there is no mayhem to be judged of; and of appeal of wounding in the ſame manner. By the death of the king all pleas are ſuſpended, all gaols opened, no judge, bailiff, or other officer ought to intermeddle therewith for want of warrant, and all outlaws, and all waives, and thoſe who have forjured the realm, and all baniſhed perſons uſed then to return, except thoſe who were exiled and baniſhed for ever; and if any recovered before for that he could not have debt, if he were not juſtified to the peace; and if he be brought to judgment, and if he be accuſed of outlawry, he may ſay that he is diſcharged of the outlawry by the king's grant; or he may ſay that the outlawry ought not to prejudice him becauſe he was under the age of 21 years at the time of the outlawry, and therefore that he was not outlawed for the felony.

Or becauſe the felony was not done in ſuch a county, or becauſe he was not outlawed

in *England*, or not within the king's dominion where the writ runneth; for an outlawry pronounced againſt a man in the biſhoprick of *Durham*, or elſewhere in the land where the king's writ doth not run, ſhall prejudice as one in the land where the king's writ runneth, *nec e contra.*

Or becauſe the felony was not done in the time of this king, or not ſince the laſt Eyre in that county; or becauſe the proceſs of the outlawry was falſe, by a falſe warrant, or without any warrant, or becauſe he lay ſick, and was eſſoined *de malo lecti*, or becauſe he is alive for whoſe death he was outlawed; or becauſe he was impriſoned the day of the outlawry, or becauſe he was in the king's ſervice in the Holy Land, or within the realm for the profit of the commonwealth.

Or becauſe he had the king's protection, or becauſe he was a madman, or an ideot, or deaf, or dumb, or profeſſed in religion; in which caſes if he pray to be received to anſwer, he is to be received.

And the plaintiff was to be demanded, and it was to be proclaimed, that if any one could ſhew why he ſhould not be enlarged, that he appeared at a certain day.

All parties in judgment are neceſſary to be preſent, and they are to have Oyer of the writs, of the original, the plaintiff's commiſſion, the quantity or the quality of his

his plaint. And the diſſeiſor or their bailiffs, every one of them for himſelf may ſay in this manner, he may anſwer and ſay for himſelf, that he hath not done any wrong or diſſeiſin, nor hath any thing in the tenements put in the plaints; and he may ſo anſwer, and ſo of others till it come to the tenant in whoſe name the diſſeiſin was; and he may anſwer and ſay, that he is not in by diſſeiſin, but is in by by *D.* who enfeoffed him who is not named in the writ; and it may be that *D.* entred by *E.* and ſo there may be many, according to divers feoffments betwixt the firſt diſſeiſor and the tenant, in which caſes no voucher to warranty holdeth place for a perſonal treſpaſs, and therefore every one is well to look not to make a contract of a vicious thing, and that he take caution, and ſuch ſurety in the contract that he may have a recourſe to recover if he loſe the thing; and therefore the lords uſed ſo keep their manors that none could enter by intruſion, diſſeiſin, or by other vicious bargains, nor otherwiſe unleſs the bargains were entred in their full courts, whereby the lords could not have received their enemies into their manors, nor have taken their homage againſt their wills, nor any uſed to enter before they had found ſureties to reſtore to the purchaſer or his heirs the value of the thing, if by rightful judgment it belonged to him after his

thing loſt for the offence of alienation, or for his power of this warranty.

To the principal diſſeiſor it belongeth to have a regard, if the plaintiff put more into his plaint, that he anſwer not but to that which he may avow; he may ſay, that there is variance betwixt the original and the commiſſion; or that the writ is vicious, as it is in miſpriſion of names, or ſur-names

Of names, as *Renand* for *Harrand*, *Margery* for *Margaret*, and ſuch like; or he may ſay the writ is faulty for want of ſur-names, or if the names of dignity be omitted; as if a biſhop, abbot, prior or other, be diſſeiſed of any thing in the right of his dignity, and he makes his plaint ſimply of a treſpaſs done only to his perſon, and not to his church or dignity in this manner; *A.* complains to you, whereas he ought thus to make his plaint. *A.* biſhop of London, and ſo it is of diſſeiſors; or he may ſay, that the writ is vicious, becauſe the plaintiff who is ſolely in the plaint hath no cauſe of action, but with another who is not named in the writ.

Or it may be faulty if it be not contained in the writ, *diſſeiſivit eum*, where it ought to be *deſſeiſivit eam*, or *eos*, where it ſhould be *eum* or *eam*, *et e contra*.

It is contained in the writ, (wrongfully and without judgment) *&c.* and to that one may plead not wrongfully, but rightfully, denying any other force.

And note, that one may be diſſeiſed wrongfully and without judgment, and wrong-

wrongfully and by judgment; as it is of thoſe who are diſſeiſed of their freeholds by the judges who have no juriſdiction, and nevertheleſs adjudge men to be put out of their poſſeſſions; and one may be rightfully and without judgment, as in the caſes aforeſaid; and further rightfully and by judgment, and thereof riſe exceptions, and ſo not without judgment and yet by judgment, and that may be either by the judgment of judges commiſſaries, or judges ordinaries as were the ſuitors.

Again, writs may be vicious by miſpri-- ſion of the names of the towns, as if a hamlet be named for a town; or if the town be not right named, or if the town be not diſtinguiſhed, where there are two towns of like name in the ſame county.

And from theſe words (after the term) may ariſe exceptions; as if not the term yet he might have diſtrained for, or the arrearages of his penſion, or ſpecial obligation, except that he had any wrong.

Or becauſe another writ for the ſame action is yet depending betwixt the ſame parties; or he may ſay that he wrongfully complains, whereas at his own plaint he loſt the ſame tenement by a lawful judgment againſt him; or that he hath releaſed or quit-claimed all his right, or to the ſame purpoſe, or otherwiſe ratified his eſtate, or becauſe at another time

time he withdrew his action before ſuch judges.

For the helping of the peoples memories are eſcripts, charters and muniments very neceſſary, to teſtify the conditions and the points of contracts; for by the ſtatute of *Lenfred*, who ordained that one might deny contracts by waging of his law, and that plaintiffs prove their writings, otherwiſe their charters which are not denied, and not to be ſhewed by jurors in *England* for foreign contracts, of places enfranchiſed, or elſewhere, where the king's writs run not, by copies, or collation of the ſeals of others, or by jurors, or by battle, according to the plaintiffs action.

To give matter and way to exceptions in the aid of thoſe who are to anſwer, one is to know the end and limitation of actions, and of pleas, ſo that the pleas may have an end, and therefore preſcriptions were ordained, whereof *Thurmond* ordained, that criminal actions for revenge ſhould ceaſe at the year's end, if they were not brought before, and the ſame time he appointed in all actions for wrecks, eſtraies, waif, and of things loſt; in perſonal actions venial he appointed the term after the laſt Eyre in thoſe parts; in real actions and mixt he appointed forty years, nevertheleſs as to the king in the right of his crown, and to the frank eſtate *nullum tempus occurrit*.

To

To an action of account he may ſay, that he never was his receiver, nor adminiſtrator of his goods, nor of his monies, whereby he was bound to render him any account, and that he received them of him under the title of buying, whereof he gave him a writing to ſurrender at a certain time; or thus, notwithſtanding he was his receiver or adminiſtrator in a franchiſe, or elſewhere out of the realm, or in a privileged place, whereby he is not bounden to give him an account within the realm, nor where the king's writ runneth, or is guildable, or *e contra*.

Or he may ſay that the writ is vicious by falſe ſuppoſition, and falſly ſuppoſeth the defendant to be a fugitive, and beſides not a freeholder within his bailiwic to whom the writ is ſent.

Or he is not bound to yield him any account for that he was never receiver of his own hand, or of his daily receipt he gave him a daily account; or that he diſburſed nothing, nor brought any thing but in the plaintiff's ſight, or of ſome of his; or for that the plaintiff by tallies and other rolls hath diſcharged him of ſo much in value as the defendant was to give an account for.

Or becauſe he hath made him an acquittance thereof, or becauſe he was never guardian of his inheritance as his guardian, but was guardian during the time of the thing for his own proper uſe, or it belongeth to him that is guardian of the lands

in

in the right of his fee, whether it be ſocage or other.

To the action of villanage he may ſay, that he is a freeman, and that he hath proved the ſame at another time by a writ of *libertate probanda*, that he is quit from any challenge by the plaintiff for ever, if he have no reaſonable counter-plea againſt it.

As to the ſeiſin of villain ſervices he may ſay, that he did thoſe ſervices wrongfully, by extortion, and dureſs of him and his bailiffs, or for the ſervice of villanage and villain land which he held of him, and not by ſervice of blood; and there are two other things, the one that if the defendant can ſhew a free ſtock of his anceſtors, either in the conception or in the birth, the defendant hath always been accounted for a freeman, although his father, mother, brother and couſins, and all his parentage acknowledge themſelves to be the plaintiff's villains, and do teſtify the defendant to be a villain.

The other thing to be noted is, that no more than the long tenure of copyhold land maketh a freeman a villain, the long tenures of freehold maketh a villain a freeman; for freedom is never loſt by preſcription of time.

There are many manner of proofs by the ſame pleas, ſometimes by records, ſometimes by battle, ſometimes by witneſſes, ſometimes by the confeſſions of the adverſe parties.

1 By record, as in caſe where the parties do agree together upon ſome inrolment, or to the judgment of ſome judge ordinary or aſſigned.

2 By battle, for upon warrant of the combat which the judges took betwixt *David* for the people of *Iſrael* of the one party, and *Goliah* for the *Philiſtines* on the other party, is the uſage of battle allowable by the law in *England*, ſo that the proof of felony and other caſes is done by combat of two according to the diverſities of the actions; for as there is a perſonal action and a real, ſo there is a perſonal combat and a real; perſonal in perſonal actions, real in reals; and theſe combats are differing in this, that in a perſonal combat for felony none can combat for another, nevertheleſs in actions, perſonals, venials, it is lawful for the plaintiffs to make their battles by their bodies, or by loyal witneſſes, as in the right of real combats, becauſe that none can be witneſs for himſelf; and no man is bound to diſcover his real right, and although they make theſe combats for the plaintiffs by witneſſes, the defendants nevertheleſs may defend their own right by their own bodies, or by the bodies of their freemen; and further they differ, for as much as in appeals none can combat for another, but it is otherwiſe in real actions; for if that one of the parties be hurt ſo as he cannot combat, his eldeſt ſon may wage the battle for him.

The battle of two men ſufficeth to declare the truth, ſo that the victory is holden for truth.

Combats are made in many other caſes than in felonies, for if a man hath done any falſity to me in deed, or in word, whereof he is appealed or impeached in judgment, if he deny it, it is lawful for me to prove the action either by jury or by my body, or by the body of one witneſs; and if it be of the falſe judgment of many, then the proof belongeth only againſt the pronouncer of the judgment for the whole court.

And ſo it is in caſe where you deny your gift, bailment, pledges, deed, ſeal, or other manner of contract, or the words which you ſpake, or the deed which you did.

Nevertheleſs you are to diſtinguiſh of the qualities of the cauſes, for in appeals of felony none can combat for another, as is ſaid, but in venial cauſes, although one be killed in the battle he committeth no murder, but only thoſe vanquiſhed, or their clients for them ſhall tender to the combatants vanquiſhing, forty ſhillings in name of cowardice, beſides the judgment upon the principal.

And in caſe where battle could not be joined, nor there was no witneſs, the people in perſonal actions uſed to help themſelves by a miracle of God in this manner; if the defendant were a woman, or of ſuch a condition that ſhe could not join battle,

and

and the plaintiff had no witneſs to prove his action, then the defendant might clear her credit by the miracle of God, or leave the proof to the plaintiff; and in the contrary caſe the proof only belonged to the plaintiff.

At the day of the proof, or of the purgation, after the *benediction*, and the *maledictiion* of the prieſt, cloathed with the holy garments of the maſs, and after the parties oaths, one uſed to keep the party; and he was to carry in his hand a piece of burning iron if he were a freeman, or put his hand or his foot in boiling water, if he were not free; or to do ſome ſuch thing which were impoſſible to do without a miracle from God; and if he was not hurt or blemiſhed the adverſe party remained as attainted; but chriſtianity ſuffered not that they be by ſuch wicked arts cleared, if one may otherwiſe avoid it.

Battle is not to be joined betwixt all people, for it is not to be joined but betwixt equals, nor yet betwixt all equals, for not betwixt the father and the ſon, nor betwixt women, or infants, or clerks, or parents, or aſſigns.

Equals are not a man and a woman, nor a holy man, and an excommunicate perſon, nor a chriſtian and an infidel, nor a whole man and a ſick, nor a man of good memory and a madman, nor a wiſeman and a fool, nor a ſound man, nor a man mayhemed,

nor

nor a man and a child, nor a clerk and a lay perſon, nor a man profeſſed in religion and a ſecular man, nor a true man and a felon, nor a man within the king's allegiance and out of his allegiance, nor the lord and tenant.

The ſmallneſs alſo of the thing in demand doth hinder the battle, and many other cauſes, as it appeareth in the law of fees; nevertheleſs if thoſe who are not receivable to join in battle will combat, if the battle be joined betwixt them, it is no wrong to them who deſire it.

And if any one offereth himſelf to combat with one armed, who before was not brought by the parties, and the adverſe party demand judgment for the default of his adverſary; as if he tendereth a witneſs who offereth himſelf to decide the difference, and now he offereth to furniſh the battle by another who was not ſeen, nor heard in court, and who cannot and ought not to try the battle; in ſuch caſe it belongeth to try the exception as peremptory to the action, if the parties will not agree unto it.

CHAP.

CHAP. III.

SECT. 24.

Juramentum duelli.

AFTER the battle joined, adjourned and preſented, and the parties duly armed, firſt the defendant is to ſwear in this manner, Hear this you man who I hold by the hand, whom you call *N.* by name, that I did never kill ſuch a one your father, or ſaid any ſuch thing ſuch a day, *&c.* So God me help, and the holy evangeliſt.

Afterwards the plaintiff ought to ſwear in this manner, Hear you this man who I hold by the hand, that you who are called by your right name *N.* are perjured, becauſe that you ſuch a day, *&c.* felonioufly killed, *&c.* or ſaid ſuch words, or did ſuch a thing, *&c.*

CHAP. III.

SECT. 25.

The ordring of the combatants.

AFTER their oaths be taken, it behoveth to look that the parties be armed according to the ancient uſage, of what condition ſoever they be, knights or others.

The ancient uſage to be armed in all caſes of combat is this, the bodies are armed without *ſeme cotu et beliea*, and the heads and the necks and the hands uncovered, the backs, thies, legs and feet armed with iron, and each to have a ſhield of iron, and a ſtaff horned of one aſſiſe. The plaintiff cometh into the liſt from the Eaſt, and the defen-

dant from the Weſt, and on the place they ſwear in this manner. That they have not about them any charm, nor deceit, nor have eat nor drank any thing whereby the truth might be diſturbed, leſſened, and the law of the devil enhanſed; ſo God them help and the holy evangeliſts. Then proclamation is made that none diſturb the battle, and oyes is made, that there be no noiſe upon a corporal puniſhment; and then they meet together, and if the defendant defend himſelf till after the ſun ſetting, and demand judgment of the default of the plaintiff, in that caſe judgment ſhall be given for the defendant.

And if any fraud be found with one of the parties, as to be privily armed, or there found, or other thing unallowable, and the fraud be adjudged, that they be preſently ſevered, and judgment is preſently to be given, and the vanquiſhed is to acknowledge his offence in the hearing of the people, or ſpeak the horrible word of cravent in the name of *cowardice*, or his left foot to be diſarmed and uncovered in ſign of the cowardice, and that judgment be preſently given againſt the principal.

CHAP. III.

SECT. 26.

AS to perſonal treſpaſs, in the caſe, this exception lieth, Sir, he wrongfully impleadeth me of this treſpaſs, for the ſame man impleaded ſuch or ſuch before ſuch judges, in ſuch a place of the ſame treſpaſs, and

and made me no party to the ſuit; and for-aſmuch as that he then recovered by judgment his full damages againſt them named in his plaint, and this ſuit is not brought againſt me, but to recover damages, and the law is, that a man ſhall not recover double damages, I demand judgment of his action.

As to the alienations and occupations of franchiſes, reals, appendants to the crown, a man ſhall not vouch therein to warranty, nor demand the view, nor preſcribe in them; for of ſuch dignities none can help himſelf, by a plea of long preſcription, but ſuch avowries of long continuance are accounted rather preſcriptions of wrong, than lawful exception, ſeeing *nullum tempus occurrit regi*, in his franchiſes, but therein the king is like to an infant who can loſe nothing although that for the perſonal treſpaſs for the uſing of them, it behoveth every one to excuſe the wrong done to the king, or to any other; and that may be done two ways, becauſe his anceſtor whoſe heir he is, died ſeiſed thereof, and ſo that he hath enjoyed the ſame by title of ſucceſſion, as a thing annexed to his land. Or becauſe he, of whom he purchaſed the land to which the franchiſe belongeth, was ſeiſed, as if he were the poſſeſſor thereof. But this exception is counter-pleadable by this replication, Sir, this avowant cannot recover nor excuſe himſelf. For although that ſuch a one his anceſtors were ſeiſed thereof, yet nevertheleſs

he could not grant away this franchiſe, for the kings never granted them ſo, that the grantees could aſſign them over, or make aſſigns of them.

CHAP. III.

SECT. 27.

Of purpreſtures.

TO purpreſtures, if the defendant may excuſe his wrong, he need not to anſwer thereunto without a writ, no more than to the action of franchiſes; not of his own wrong of land or fees, or of the appurtenances againſt any other than againſt the king; nor for the king but in his preſence. And if the wrong be not originally the plaintiff's, he may vouch to warranty.

CHAP. III.

SECT. 28.

Of treaſure.

TO the alienation of treaſure found, he may juſtify it, if he be privileged or authoriſed ſo to do. Or he may ſay, that he himſelf put it there, or ſuch other whom he remembreth; whereby no action accrued to the king.

CHAP.

CHAP. III.

SECT. 29.

Of wrecks.

TO the action of wrecks he may plead, that the king hath no action for the ſame, becauſe the year is not yet paſt; and in the ſame manner is it of eſtrays, and of all other things found. Or becauſe that he knoweth to whom the goods belong who is alive. Or becauſe the goods were taken far in the ſea, and were not caſt upon the land by the waves of the ſea.

CHAP. III.

SECT. 30.

Of uſury.

TO uſury he may plead, and ſwear that he lent his corn in winter, to receive the ſame in *September*, according to the price as corn ſhould be ſold, which was dearer at that time; or he may ſwear, he lent his monies to receive better money for the ſame for a year; and that the ſame is no uſury.

CHAP. III.

SECT. 31.

Of hunting.

TO an action of hunting, chaſing, or fiſhing, he may plead, that he hath done no wrong, for it is his right to hunt

there, or to chaſe, or it is his common piſcary belonging to his manor of ſuch a place, *&c.*

CHAP. III.

SECT. 32.

Of obligation.

AS to obligations (or covenants) he may plead, that notwithſtanding that obligation be his deed, nevertheleſs it ought not to bind him, becauſe it is vicious, or by falſe ſuppoſition; or becauſe the defendant never ſaw any money or other thing to the value; or it is by mixture of offence or ill faith, as it is ſaid of vicious contracts; or he may plead a releaſe or quit-claim; or that it was contracted that he might do waſte, or that he hath done nothing to be adjudged waſte; or becauſe he hath taken nothing but reaſonable eſtovers for houſe-boot or hay-boot; or he may claim fee in the tenement by any lawful title.

CHAP. III.

SECT. 33.

Of attaint.

IF any of the parties ſay, that the jurors have made a falſe oath, or any jury; an action of the attaint lieth, which is to be tried by 24 jurors, ſo that every falſe witneſs be attainted by two juries. In which caſe it behoveth the plaintiff to have the firſt verdict preſent under the king's ſeal, or of the party,

or

or of the judge, and the parties to the plea, and that he declare in what point they have made a falſe oath.

Or the tenant may plead, that the plaintiff ought not to be anſwered to this attaint, becauſe the firſt judgment had not its full effect; or becauſe that the principal in all, or in part, or in right of ſatisfaction of the damages remaineth yet to be barred.

Other exceptions there are, as to the challenge of the perſons of the jurors, as appeareth in the chapter following.

CHAP. III.

SECT. 34.

The ordinance of attaint.

BEcauſe it belongeth to the plaintiff to prove his action, and to the affirmer to prove his affirmation, and not to the denier his negation; and that two credible witneſſes according to the word of God are ſufficient for witneſs. The uſage is, that the affirmative party, in aid of the court, cauſe the neareſt credible neighbours to appear in witneſs, ſo that there be 12 men at the leaſt of the jury, of ancient time ordained to be of the aſſize, of which if two men are by falſe verdict of them, and of the other jurors; or if by good examination, if all the jurors be of one aſſent found convenable, it ſufficeth; and if not, or if all the jurors ſay generally, that they know nothing, or doubt of the matter, or if they ſay not expreſly againſt the de-

fendant, or if they ſpeak for the defendant, in ſuch caſes, it is to be adjudged againſt the plaintiff, that he proveth not ſufficiently his ſaying. And although the defendant would make other defence, he ſhall not be ſuffered ſo to do.

Againſt jurors hold challenges, as againſt witneſſes, in this manner. Sir, this man is not a convenable juror, becauſe he is one of thoſe who indicted me of a mortal crime, ſo as he did as much as in him lay to deſtroy me, and ſo he is my mortal enemy, or for other cauſe of enmity.

Or becauſe that he is excommunicate, or indicted, or appealed of a mortal felony; or becauſe he is not of the king's allegiance, or becauſe he was at another time attainted of a falſe oath, or ſuffered ſuch corporal puniſhment for his offences or otherwiſe is infamous.

Or becauſe he is friend couſin or ally, or of kindred to the other party; or becauſe he is a villain, or otherwiſe in cuſtody; or becauſe he is the ſervant, or proctor, or tenant of the adverſe party, or becauſe ſhe is a woman, or becauſe he was outlawed, or becauſe he was forjured the realm, or becauſe he procured himſelf to be one of the jury, or becauſe he is within age, or becauſe he is a lunatick, or a madman; and many other exceptions of challengers there are, of which if any be denied, the challenge is to be tried by the jurors, and according to the trial, the juror ſhall be admitted or refuſed, and if no jury once appear for want of jurors, he may have another.

CHAP.

CHAP. III.

SECT. 35.

Of oaths.

OATHS differ many ways; the chief oath is that of fealty, which is incident to every homage iſſuing out of land, and ſometimes there is the oath of fealty, of reſiants and dwellers in other manors, and ſometimes remaining in others ſervice.

The oath of allegiance was in theſe words. I will bear faith to ſuch a king of life and member, and terrene honour, againſt all thoſe that from this day forward ſhall, *&c.* So God me help, and his holy evangeliſt.

CHAP. III.

SECT. 36.

Homage.

HOmage is done in theſe words. I become your man for ſuch land; ſo that the whole quantity be ſhewed, and certainty ſpecified; whereby the lord well knoweth both how he may warrant his tenant, and for how much he bindeth his land to warranty; and that the tenant know for how much he is his tenant.

CHAP.

CHAP. III.

SECT. 37.

Fealty annexed to homage.

THE oath of *fealty* annexed to *homage* is in theſe words. I ſhall bear *fealty* to him by name of life and member, &c. for ſo much as I ſhall be his tenant, againſt all, &c. ſaving the oath of *fealty* which I have made to ſuch a king, &c.

And if I ſwear *fealty* to another than to the king, then thus, ſaving the faith which I ſwore to the king, and to my other lords.

And if the homage be done to the king, or to another to whom the tenant hath before ſworn *fealty*, in theſe caſes, he needeth not ſwear *fealty* again, if the allegiance in no caſe hath been broken.

CHAP. III.

SECT. 38.

Common oaths.

COmmon oaths are in theſe words, I will ſpeak truth in what you aſk of me in ſuch a caſe; So God me help, &c.

The oaths in aſſiſes are in theſe words.

I will ſpeak the truth of the land of which I have had the view by authority of this aſſiſe, or of the land of which this action of rediſſeiſin is arraigned, or of the paſture, or fee, or of the nuſance, or of the wall, or of the ditch, or of the pool, or of the water, or of the church, or of the rent, or of the ſervice,

vice, and nothing ſhall hinder me that I ſhall not ſpeak the truth, *&c.*

Of life and member and terrene honour, he will do ſo much, that he will never aſſent that the king or his other lord have damage of his life, or any of his members, nor will aſſent that his honour ſhall be overthrown in power nor fame.

CHAP. III.

SECT. 39.

Of final accords.

NO law forbiddeth pleas, nor accords, wherefore it is lawful for every one to agree with his adverſary, and to releaſe and quit-claim his right, and his action.

Nevertheleſs after one hath once affirmed and brought his perſonal action whereby ſcandal ariſeth, none can agree it without the leave of the judge, ſo as he may withdraw it. For every plaintiff in actions of ſcandal, who attainteth not his adverſary according to that as he hath brought, his plaint is adjudged ſcandalous, as his adverſary ſhould be if he were attainted. Nevertheleſs, in favour to ſave a man from death, who is not attainted of mortal offences, it is ſuffered that the adverſe parties do agree; after battle waged one of the parties nevertheleſs remaineth infamous.

None can accord or agree, who is not of the age of 21 years, nor any who is in cuſtody, nor any by attorney.

In

In cuſtody are villains, married women, men profeſſed in religion, infants within the age of 14 years, heirs ideots, heirs deaf and dumb, heirs diſeaſed, and thoſe who are in priſon, and under bail, and women who are in the cuſtody of the lords, who have the marriage of them.

The

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CHAP.

CHAP. IV.

SECT. I.

Of Judgment.

THE flower, and neceſſity of law doth depend in righteous judgment, without which the law can have no effect, nor any due end. And therefore it is fit to ſpeak of judgments, which are not in all points here according to the rigour in the old teſtament, and the uſages uſed by *Moſes* and the prophets, before the incarnation of Chriſt; but they are mitigated to the temper of mercy, of the truth, and of the juſtice which Chriſt himſelf uſed upon the earth, and commanded to be uſed in the new teſtament, and which the apoſtles and their ſucceſſors have uſed ſince the incarnation of Chriſt, and according to the judgments of the ancient uſages in pleas, touching the laws of this realm.

CHAP. IV.

SECT. 2.

The ordinance of judgment.

JUdgment cometh from jurisdiction, which is the greatest dignity which belongeth to the king. And there are two kinds of jurisdiction, ordinary and assigned; every one hath ordinary jurisdiction, if offence take it not away from him; for every one may judge his own according to the right rules of law. But this jurisdiction is now restrained by the power of kings, in as much as none hath power to hold plea of trespass or of debt which passeth 40 *s.* but the king. Nor any hath power of conusance of fees without a writ. Nevertheless, it is lawful for every one to f. oust the mortal offender, for committing of their offences, by good witnesses, by warrant of ordinary jurisdiction, whether the offenders be clerks or lay people, of age, or within age, and all other of what condition soever they be; and in those cases are those offences called notorious offences.

There are two kinds of notorious, notorious in fait, and notorious in right.

Notorious in fait is, where no contradiction lieth, nor no oaths need to justify them, by reason of the witness of the people.

Notorious of right, is where the offenders are attainted of their offences by themselves, or by the oaths of witnesses, or otherwise in judgment. This jurisdiction assigned is

that

that which the king aſſigns by his commiſſions of his writs; for without a writ he cannot by law grant any juriſdiction, if not in the preſence, and with the aſſent of the parties.

None can give juriſdiction but the king, and the reaſon is, becauſe he is not ſufficient to bear without help the charge which belongeth to him to puniſh the treſpaſſes, and to aſſoil the offenders which he hath to govern.

And ſo our anceſtors appointed a ſeal and a chancellor to help the ſame, to give writs remedial to all plaintiffs without delay.

That writs uſed to be of this aſſiſe, they were without raſure, without interlining, without blots, without uſual tranpoſition, and without every fault in the parchment and letters, and written in Engliſh with a known hand, by a clerk of the chancery, and uſed to contain the name of the parties, and the ſubſtance of the plaint, and the name of the judge, and of the king, or other teſte of the writ, which ſometimes were directed to the lord of the fee, ſometimes to the bailiffs, ſometimes to the juſtices in Eyre, ſometimes to certain perſons named, and ſometimes to perſons not named, as to bailiffs, juſtices, and ſheriffs.

And every plaintiff uſed to have a commiſſion to his judge, by the writ patent aforeſaid.

And now may juſtices, ſheriffs, and their clerks forge writs, thorough draw looſe, amend or impair them, without any proſecu-

ting or punishment, because the writs are made close through abuse of the law. By that seal only is jurisdiction grantable to all plaintiffs without difficulty, and the chancellor is chargeable by his oath of allegiance to make such writs, and that he do not delay or deny justice, nor a remedial writ to any one.

CHAP. IV.

SECT. 3.

Jurisdiction is a power to declare the law.

THAT power God gave to *Moses*, and that power they have now, who hold his place upon earth, as the pope, and the emperor, and under them the king now hath this power in his realm.

The king, by reason of his dignity, maketh his justices in divers degrees, and appointeth to them jurisdiction, and that in divers manners, sometimes certain, especially, as in commissions of less assises; sometimes in certain generally, as it is of commissions of justices in Eyre, and of the chief justices of pleas before the king, and of justices of the bench, to whom jurisdiction is given to hear and determine fines not determined, the grand assizes, the transactions of pleas, and the rights of the king and of the queen, and of his fees, and the words of the king's writs, whether they be named generally or specially.

Besides, the barons of the Exchequer have

jurisdiction over receivers and the king's bailiffs, and of alienations of lands and rights belonging to the king, and to the right of his crown. Sometimes jurisdiction is given to sheriffs for the defaults of others, as appeareth in the writ of right; where it is said, that if he do not right, that the sheriff of the county shall do it.

Sometimes to those who have the return of writs returnable.

Sometimes jurisdiction is given to the justices of the bench by removing of the pleas out of the counties, before the said justices, and sometimes to record the pleas holden in mean courts without writs, before the same justices of the bench: but as those records ought not avail the plaintiffs, if not after judgment given, that the pleas be returnable until after their judgments. And as the pleas moved upon the writs are to be remanded into the lords courts, where the lords have not failed to do right. In like manner are the pleas removed by pone returnable in the counties, in case where the parties never appeared in court for to plead.

To the office of chief justices it belongeth to redress and punish the tortious judgments, and the wrongs and the errors of other justices, and by writ to cause to come before the king, the proceedings and the records, with the original writs, and before such justices are all letters pleadable returnable, and to be ended, wherein mention is made before the king himself; and the writs not pleadable,

pleadable, nor returnable before the king, are returnable into chancery.

And also it belongeth to their office, to hear and determine all plaints made of personal wrongs, within twelve miles of the king's house, and to deliver gaols and the prisoners from thence, who are to be delivered, and to determine whatsoever is determinable by justices in Eyre more or less, according to the nature of their commission.

On the other side there is a kind of jurisdiction, which is called arbitrary, which is not ordinary, nor assigned, as is such which is by the assent of the parties.

Of jurisdiction cometh judgment, which hath many significations: in the one, judgment is as much as to say absolution from offence; in another sense, as sentence, which sometimes soundeth well, as of discharge or acquittance from punishment, and sometimes ill, as excomengement: and in another sense, as the end of the plea, and the end of jurisdiction.

Jurisdiction assigned may be for a time, or for ever. For a time, as in some exception dilatory, where the action reviveth; for ever, as by a definitive sentence upon the action.

Judgments vary according to the difference of offences. In like offences nevertheless there are the like judgments. For the mortal offences according to the warrant of the old testament, were assoiled by death; for in the old testament it is found, that God commanded *Moses*, that he should not suffer fe-

lons to live. But before more is to be ſpoken of puniſhments, it is to ſee by what introduction offenders and contumacious perſons are compellable to appear in court, and by what judgments.

CHAP. IV.

SECT. 4.

Defaults puniſhable.

DEfaults are puniſhable many ways. In appeals of felony they are puniſhable by outlawry; which judgment is ſuch, that after that any one hath been ſolemnly called, and demanded to appear to the king's peace at three ſeveral counties for felony, and he cometh not, that from thence forward he is holden for a wolf, and is called wolf's-head, becauſe the wolf is a beaſt hated of all people; and from thence forward it is lawful for any one to kill him; as it is a wolf, whereof the cuſtom was, to bring the heads to the chief place of the county, or of the franchiſe, and according to law, for every head of an outlaw, to have half a mark, and ſuch fugitives, outlaws, forfeited for their contempts, the realm, country, friends, and whatſoever belonged to the peace, and all manner of rights which they ever had, or could have by any title, not only as to themſelves, but to their heirs for ever. Alſo, all confederations of homages, of alliance, of affinity, of ſervice, of oaths, and all manner of obligations betwixt the outlaws and others were broken, ſevered,

and

and defeated by ſuch judgment. And all manner of grants, rents and contracts, and all manner of actions which they had againſt any manner of perſons, were void, not only from the time of judgment, but from the time of the felony, for which ſuch judgment was given; and ſuch perſons could never again reſort to anſwer the felony, if the proceſs of outlawry were not faulty, if not by the great mercy and favour of the king; women were not plevisibles, and put in dozeins as men, but were waves.

CHAP. IV.

SECT. 5.

Defaults.

IN perſonal actions, venials, defaults uſed to be puniſhed after this manner. The defendants were diſtrained to the value of the demand, and afterwards they were to hear their judgments for their defaults, and for default after default, judgment was given for the plaintiff. This uſage was changed in the time of king *Hen.* I. that no freeman was not to be diſtrained by his body for an action perſonal, venial, ſo long as he had lands; in which caſe the judgment by default was of force, till the time of king *Hen.* III. that the plaintiff ſhould recover his ſeiſure of the land, to hold the ſame in demeſne after default, until due ſatisfaction was made, ſo as the defaults were more hurtful to perſons in contempt, then profitable.

Some actions are perſonals, and not mixt in the introduction, as of neifty, of account,

of leading away diſtreſſes; and ſome actions there are, that although they ſavour of the perſonalty and realty, yet they hold not the rules of thoſe actions; as of recognitions of aſſiſes, in which if the tenants make defaults, for that there is no diſtreſs nor ſeiſure of the land, or other thing in the king's hands, but the recognitions are to be taken *ex officio*, and the judgments are to be pronounced according to the verdict of the jurors, in reſpect of ſuch defaults.

CHAP. IV.

SECT. 6.

Of perſonal action.

IN perſonal actions, venials, where the defendants are not freeholders, the defendants uſed to be puniſhed after this manner. Firſt, proceſs was to be awarded to arreſt their bodies, and thoſe who were not found, were put in exigent in what court ſoever the plea was, and were at three courts ſolemnly demanded and proclaimed; and if they appeared not at the fourth court, then were they baniſhed the lord's juriſdiction, or the bailiffs of the court for a time, or for ever, according to the quantity of the treſpaſſes.

CHAP.

CHAP. IV.

SECT. 7.

Defaults in real actions.

THE defaults in real actions are punishable in this manner. At the first default the plaintiff is there seised to the value of the demand into the hand of the lord of the court, and the tenants are summonable to hear their judgments of defaults; or after appearance, the seisure is to be adjudged to the plaintiffs, to hold in the name of a distress, until by lawful judgment he be ousted thereof. And if any one appear in court, first he is to plenise the thing in demand, and presently to answer the default; in which case he may deny the summons, because he was never summoned, or not reasonably summoned, and thereof he may wage his law against the testimony of the summoners, although they be present, and if he wage his law, he is presently to plead to the action, or to the plaintiff.

CHAP. IV.

SECT. 8.

Of actions mixt.

THE defaults of mixt actions are punishable in this manner, the defendants are distrainable by all their moveable goods and lands, saving that they are not put out of that possession from court to court, till they appear and answer, and the issues come to the profits of the lords of the courts.

CHAP. IV.

SECT. 9.

Of pledge and mainpernor.

PLedges and mainpernors are of one ſignification, notwithſtanding that they differ in names; but pledges are thoſe, who bail other things than the body of men, as in real actions and mixt, mainpernors are in perſonal actions, only thoſe who bail the body of a man; ſafe pledges are thoſe who are ſufficient to anſwer the demand, or the value, and are true men, and freeholders to whom the plaintiff is, and in whoſe court the plea is brought; and if any one bring the body or his fees by default, he is ſufficient puniſhed, though he be not amerced, but then the offender is firſt amerceable, when he is brought to judgment, and cannot excuſe his wrong or ſave his default.

And as none who cometh before ſummons is amerceable, ſo no plaintiff is amerceable, or his pledges, *de proſequendo* for nonſuit, where the tenant appeareth according to the warrant of the ſummons; or otherwiſe maketh ſatisfaction for the ſame. As in caſe where the king commands the ſheriff, that he command ſuch a one to appear or to do; and if he do not, and the plaintiff put in ſureties to proſecute his ſuit, then that he ſummon or attach the defendant, *&c.* In which caſe, if the ſheriff had not warned the

tenant

tenant to appear to do according to the points of the warrant, if he take ſurety of the plaintiff to proſecute, he doth him wrong: but the plaintiffs and their pledges are to be amerced, when the defendants offer themſelves in judgment againſt them; and they make defaults by nonſuit.

And alſo thoſe ſheriffs do wrong who forbear to execute the king's commands, in as much as the plaintiffs have found ſureties to proſecute their plaints, when no mention is made in the writs to put in ſureties.

CHAP. IV.

SECT. 10.

Defaults after ſummons.

AS there is a default of perſons, in the like manner there are of things; as of ſervices iſſuing out of lands where the lands are in ſervice; and where not: if rent, ſuit, or other ſervice be behind to the lord of the fee, the tenant is not diſtrainable for the ſame by his moveable goods, but it behoveth to ſummon the tenants to ſave their defaults, or to make ſatisfaction, or to anſwer wherefore thoſe ſervices due out of their poſſeſſions are behind to the lords; and if they appear not at the ſummons by the award of the ſuitors, their lands are to be ſeiſed into the lord's hands, till they juſtify themſelves by pledges. And if they be again ſummoned, to hear the judgments for their defaults; although

although they come not at the ſecond ſummons, they are not to be amerced, in as much as they came, they may render the land, or alledge a privilege, or ſay ſomething why they ought not to obey the ſummons.

And if the lord have not a proper court, nor ſuitors, or hath not power to do juſtice to his tenants in manner as aforeſaid; then the ſame may be done in the county or hundred, or elſe in the king's courts; or at firſt by a writ of cuſtoms and ſervices, and other remedial writs. And if any one hath not any thing to acquit himſelf, the lord is not to loſe his right although he be delayed thereof, but the lord may ſeize his land as before is ſaid, and the tenant is to recover his damages where he can, and it ſhall be accounted his folly to enter or remain in another fee, without the conſent of the lord.

And if any one ouſt him of his land, and of his tenement, and enforceth another perſon to hold of him, and maketh himſelf meſne betwixt the lord and the tenant, in prejudice of the lord, in ſuch a caſe the law is uſed to hold the courſe after ſaid.

CHAP. IV.

SECT. II.

Of champion.

IF any one do or ſay to his lord of whom he holdeth any thing, which turneth to the

the hurt of his body, or to his diſinheriſon or to his great diſhonour; firſt by the award of his court, or of ſome other ſuch a one is ſummonable, if he be his tenant, and afterwards if he make default he is diſtrainable by his land by the lord, till he appear; and if he appear, and cannot diſcharge himſelf, by his wager of law, by 12 men more or leſs, according to the award of the court he is to be diſinherited of the tenancy, which he holdeth of the lord, in ſuch a manner by the judgment of the ſuitors, and ſo it behoveth that the tenants leave their lands, and that they come to the lords.

And if any one denieth his ſervice which he ought to do, it may be ſaid by the lords, that wrongfully he denieth either part or the whole, and that to his wrong, and ſo further count of ſeiſin by his own hand, and that ſuch is his right, *&c.* as after ſhall be ſaid.

And the tenant may chuſe to try his right by his own body, or by another, or join iſſue upon the grand aſſiſe; and pray conuſance whether he hath the better right to hold ſuch land ſpecified, diſcharged of ſuch ſervice, as he holdeth, or the ſaid *A.* to have the ſame land in demeſne as he claimeth.

And if the defendant will try his right by the body of another, then ye are to diſtinguiſh. For if the action be perſonal, the ſuit need not be preſent; and if the action be real and the tenant hath his champion preſent; then may the plaintiff offer his champion againſt the champion of the defendant, or

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he ſhall loſe his covenant or his writ. And if the defendant have no champion, then are the parties adjournable if they have joined battle, that they have their champions ready at the next court, as appeareth in the caſe of *Saxeling* to whom *Huſtan* was bound in a bond of 10 *l.* by a writing obligatory made at Rome, which the ſaid *Hunſtan* denied, that it was not his deed, to which *Saxeling* by way of replication anſwered, that he wrongfully denied the ſame, and that wrongfully; for that he ſealed it with his ſeal, or with the ſeal of another which he borrowed of him, ſuch a day, ſuch a year, and at ſuch a place, and that if he would deny it he was ready to prove it by the body of *A.* who ſaw it, or by *O.* and *C.* who ſaw the ſame, and if any hurt come to them, he was ready to prove the ſame by another, who could prove the ſame. And ſo it appeareth, that it is not needful to have preſent ſuit in ſuch perſonal actions the firſt day, but the parties may be adjourned as it is ſaid.

And if any one who cannot be a fit witneſs, or who is a champion, be offered by one of the parties to combat, who was not named before to make the battle, and the adverſe party there challenge him, and demand judgment of the default, in ſuch caſe the judgment is to be given againſt the profferer.

And if any ill happen to any of their champions whereby they cannot combat according to their proffer, none is receivable

to

to try the battle for him, but only his eldeſt ſon lawfully begotten, as by ſome is ſaid.

And if the tenant's champion be vanquiſhed, the tenant thereby loſeth all homage and all alliance, and all oaths of fealty, and all homage betwixt him and the lord, and the lord is to enter therein, and to hold the ſame in demeſne as if he had recovered by the grand aſſiſe; and if the champion of the lord be vanquiſhed, that then the judgment be, that the tenant hold his land for ever quit of the ſervice in the demand.

And if the king doth any wrong to any of his freemen, who hold of him in chief, the ſame courſe is to be holden, the earls of parliaments and the commons have juriſdiction to hear ſuch cauſes and determine them, becauſe the king cannot by himſelf, nor by his juſtices, determine the cauſes nor pronounce their judgment, where the king is a party.

And as the lords may challenge the tenants of wrong, or injuries done to them againſt the articles of their fealty, in the like manner are the lords challengeable of wrongs and injuries done by them to their tenants, And if the lords do not appear to anſwer their tenants; then are the tenants to be adjudged that they do no ſervice for their lands, till the lords have anſwered.

CHAP.

CHAP. IV.

SECT. 12.

Of punishments.

PUnishment is a satisfaction for a trespass or an offence; there are two kinds of punishments. Voluntary and violent.

Voluntary is that which bindeth the doer of his own accord, as it is in his compromises, to compel the people to keep their bargains, but with such punishments the law medleth not with: of violent punishment wherewith the law medleth, there are two kinds, corporal and pecuniary.

Of corporal some are mortal, and some venial; of mortal, some are by beheading, some by drawing, some by hanging, some by burning alive, some by falling from dangerous places, and otherwise according to ancient privileges and usages.

The offences which require punishment of death, are the mortal offences.

Of venial punishments, some are by loss of member; as the felony of mayhem in case of wrong; of member; some by the loss of hand, as it is of false notaries, and of cutters of purses with the larceny of less than 12 *d.* and more than 6 *d.* which king *Rich.* changed, some by cutting out of tongues, as it used to be of false witnesses, some by beating, some by imprisonment, some by loss of all their moveable goods, and not moveable, as of false judges, and it

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is of usurers attainted of usury after their decease, but not if they be attainted thereof in their life, for then they lose but only their moveables, because by penance and repentance, they may amend and have heirs. Some by exile and abjuration of their christianity, or of the realm, of the town, of the manor or the land and their friends, as it is of those who are attainted in personal actions venials, who are not able to make satisfaction, some by banishment, as it is in contempts in personal actions venials, some by other corporal pains, as it appeareth after in its place.

And although one offend in deed, or in word, in all judgments upon personal actions, 7 things are to be weighed in the balance of conscience, that is to say, 1 The cause. 2 The person. 3 The place. 4 The time. 5 The quality. 6 The quantity. 7 The end.

1 The cause whether it be mortal or venial, 2 The person, the plaintiff and defendant, 3 The place, whether in sanctuary, or not, 4 The time, whether in day or in the night, 5 The quality of the trespass, 6 The quantity appeareth in itself, 7 The end, whether the taking were in manner of distress by a justifiable importment, or in manner of larceny, by alienation unjustifiable.

CHAP.

CHAP. IV.

SECT. 13.

Of infamous perſons.

ALL thoſe who are rightful attainted of an offence, whereupon corporal puniſhment followeth, are infamous.

Infamous are all thoſe who offend mortally or feloniouſly, all thoſe who are perjured in giving falſe witneſs, all falſe judges, all falſe uſurers, and all thoſe who are attainted of perſonal treſpaſſes, to whom open penance is joined by judgment of law.

Thoſe who impriſon a freeman againſt his will, or blemiſh the credit of his franchiſe by extortion, or by any purchaſe; thoſe who alſo bring attaints and cannot prove the perjury, whereby honeſt jurors are ſlandered.

And thoſe who indict or appeal a man who is innocent of crime, blemiſhing his credit, or wrongful ſlandering him of any perſonal wrong; for thoſe three pleas are held odious, the one becauſe the holy ſcripture forbiddeth vengeance to men, but the puniſhment of offenders belongeth to God; and God commandeth to ſhew mercy, and that is againſt the appeal of felony; the other of attainder of perjury is odious for the corporal puniſhment which followeth thereupon; the 3d becauſe it is againſt the law of nature; which will not that any man ſhould be in ſlavery to another creature.

Again

Again thoſe who combat deadly for reward, who are vanquiſhed in the combat by judgment betwixt two men, thoſe who withdraw themſelves from battles when they have undertaken the combat, if therein they make default; thoſe who keep brothel-houſes of looſe women, thoſe who take again their wives after their ſin of adultery is known to them, or keep thoſe ſuſpected of that ſin; thoſe who are adulterers, thoſe who marry other wives leaving the firſt, thoſe who are elopers or raviſhers, thoſe who take rewards to ſuffer, thoſe who caſt out their children to death, thoſe who raviſh their couſin or affines, thoſe who marry a wife within the year after the death of their former wives, thoſe who ſuffer themſelves to be married within the year after the deaths of their firſt huſbands, thoſe and they who contract marriages elſewhere, leaving their wives or huſbands, and thoſe who too ſoon purify themſelves, and many other infamous perſons are to be puniſhed by corporal puniſhments in divers manners.

CHAP. IV.

SECT. 14.

Of majeſty.

THE puniſhment of the mortal ſin of majeſty againſt the king of heaven, ſo-

domy, is by burying the offenders alive deep in the earth, ſo that the remembrance of them be forgotten for the great abomination of the fact, it being ſuch a ſin which calleth for vengeance from God, and which is more horrible than the raviſhing of the mother; but this offence is not to be brought before any judge by way of accuſation, but the very hearing of it is forbidden. The judgment of Romery is by fire, either to be burnt or hanged.

The judgment of hereſy is fourfold, one is excommunication, another degradation, the third diſinheriting, the fourth is burning to cinders.

The judgment of majeſty againſt the earthly king is by puniſhment, according to the ordinance and pleaſure of the king.

The judgment of falſifying, and of treaſon, is by drawing of the parties, and hanging them till they be dead.

CHAP. IV.

SECT. 15.

Of burning.

THE judgment of burning is to hang until the parties be dead, which uſed to be by burning, and in caſe where the damageous burning is by increaſe of any combuſtible matter; it was uſed to caſt them into

into the fire when they found them freſh in the doing of it.

CHAP. IV.

SECT. 16.

Of murder.

THE judgment of murder is commonly by hanging until the parties be dead; in felonies not notorious, and in notorious it is by beheading the murderers, nevertheleſs we are to diſtinguiſh, for ſome kill men and offend not, nor deſerve any puniſhment; ſome are man-ſlayers in ſignification and not by name; and ſome are ſlayers of themſelves.

The firſt are lawful judges who by a right judgment, and good conſcience kill men; and the miniſters, or officers who do executions of ſuch lawful judgments; and alſo as it is of thoſe who kill without judgment, and without offence, as it is of thoſe who are without diſcretion and kill men, as madmen, ideots, infants within the age of ſeven years, and thoſe who kill men in keeping of the king's peace, and of thoſe who kill by law, as of thoſe men-ſlayers, who kill men in their mortal offences, notorious in fact, and as it is of thoſe who kill men in their own defence, who otherwiſe cannot ſave their own lives.

The other ſort is of thoſe who have a deſire to kill and cannot, as it is of thoſe who caſt infants, ſick people, old people, in ſuch places where they intend they ſhall die for want of help; and as it is of thoſe who ſo pain innocent men, that to avoid the ſame they confeſs themſelves to have mortally offended; thoſe who condemn men by corrupt judgment, although that they do not directly kill them; and as wilful men-ſlayers, who appeal or indict innocent perſons of mortal offence, and prove not their appeals, or their indictments; and although theſe uſed to be judged to death, nevertheleſs king *Henry* I. ordained this mitigation, that they be not judged to die, but that they have corporal puniſhment; and of thoſe who wrongfully appeal, ye are to diſtinguiſh; for if any one hath appealed another ſo falſly, that there was no colour of appeal by judgment, or other reaſonable proof, in ſuch caſe he was to be adjudged to make ſatisfaction to the party, and afterwards to ſuffer corporal puniſhment.

King *Kanute* uſed to judge the mainpriſors according as the principals, when their principals appeared not in judgment, but king *Hen.* I. made this difference, that the ordinance of *Kanute* ſhould hold againſt main-priſors who were conſenting to the fact, and the other ſhould be adjudged againſt the plaintiffs, according to the example of the principals if they were preſent,

ſent, and againſt the king they were puniſhed with a pecuniary penalty.

The third caſe is of thoſe who burn, hang, hurt, or otherwiſe kill themſelves.

Again ye are to diſtinguiſh of other men-ſlayers; as of phyſicians, jurors, juſtices, witneſſes, of ideots, madmen and fugitives; for phyſicians and chirurgions are ſkilful in their faculties, and probably do lawful cures having good conſciences, ſo as nothing faileth to the patient which to their art belongeth; if their patients die, they are not thereby men-ſlayers or mayhemors; but if they take upon them a cure, and have no knowledge or ſkill therein; or if they have knowledge, if nevertheleſs they neglect the cure, or miniſter that which is cold for hot, or hot for cold, or take little care thereof, or neglect due diligence therein, and eſpecially in burning, and cutting off of members which they are forbidden to do but at the peril of their patient; if their patients die, or loſe their members, in ſuch caſes they are men-ſlayers or mayhemors.

Judges judge men ſometimes falſly to death wittingly, and ſometimes out of ignorance; in the firſt caſe they are murderers, and are to be hanged by judgment, and not only thoſe who gave the judgment, but the acceſſaries, abettors, and thoſe who hindred not ſuch judgment when they might have done it.

And in the ſecond place ye are to diſtinguiſh; for one manner of ignorance is, as if a thing known had not been known, and this kind of ignorance doth excuſe; the other is of a thing not known which ought to have been known, although he was not bound to know it, and this excuſeth; alſo the third kind is, which cometh of not knowing that which a man is bound to know, and this excuſeth not; and note, that ignorance in itſelf is no offence, but this neglect of knowing is an offence. The judge doth not offend ſo much that he doth not make the law, but he offendeth in fooliſh undertaking upon him to judge fooliſhly or falſly. The fourth kind of ignorance is, that a man judgeth of a thing otherwiſe than rightful, and if ſuch ignorance come of the fact it excuſeth, and of the law then it excuſeth not. Or thus, there is one manner of ignorance which one may overcome, and ſuch excuſeth not; and there is another kind of ignorance which one cannot vanquiſh, and ſuch excuſeth, whether it come by nature, or by too much paſſion, or ſickneſs, or of rage.

And that which is ſaid of judges is to be intended alſo of jurors, and of witneſſes in caſes notorious, where many intermedle feloniouſly, and any one be killed, and there be no cauſe to kill him; in caſe alſo where a child is killed by too much beating, and in caſe where many have wounded one man, who died of one ſoleſt roke, all of them generally

rally are adjudged men-ſlayers for the apparent evidence of the fact; for none but God can judge the intentions of thoſe that gave the ſtroke that it was to kill, nor who intermedled therein to hinder that any hurt were done, with a good intent; ſome who command what may be for hurt, or may be for good; ſome which held the parties, and others who ſtruck.

Again ye are to diſtinguiſh of other men-ſlayers; as ſome kill thoſe who enter to do a miſchief, if ſuch caſes be not notorious their acquittance or condemnation is in the diſcretion of the ſuitors; alſo in caſe when people kill a man in defence of themſelves and their poſſeſſions, as it falleth in diſſeiſins.

Again, if a man draw another to fence with him, or to ſhoot with him, and he giveth him ſuch a wound as if he meant willingly to murder him, the ſame is not to be judged for murder, ſeeing men cannot judge but according to facts, and not according to the intents or thoughts of the parties hearts.

Of fools alſo ye are to diſtinguiſh, for all fools are accountable men-ſlayers, as to have judgment; but only ideots, and infants within age, for a crime cannot be done, nor an offence but through a corrupted will, and a corrupt will cannot be but where there is diſcretion, and innocency of conſcience doth ſave fools outragious; and therefore *Robert Volround* ordained, that

ideots being heirs ſhould be in the cuſtody of the king, for their marriages, and for their inheritances of what manors or lords ſoever they held their lands.

Likewiſe ye are to diſtinguiſh of madmen, for franticks and lunaticks may offend mortally, and ſo they are to be accounted and judged for men-ſlayers, but not thoſe who are mad continually.

Of infants alſo ye are to diſtinguiſh, of infants murderers, and of infants killed; the murderers within the age of one and twenty years are not preſently to be judged to death in a fact not notorious, before they be of full age.

Of infants killed ye are to diſtinguiſh, whether they be killed in their mothers wombs or after their births; in the firſt caſe it is not adjudged murder; for that none can judge whether it be a child before it be ſeen, and known whether it be a monſter or not; and to infants killed in the firſt year of their age, the conuſance belongeth to the church.

Of fugitives, and of thoſe defendants is the diſtinction which followeth; he who killeth a fugitive after that he ſubmitteth himſelf to the king's peace in a fact not notorious, he is to be adjudged to death as a man-ſlayer, otherwiſe not; and he who killeth a man defending himſelf, who might fly and avoid the killing is alſo to be adjudged to death as a man-ſlayer, otherwiſe not.

Of the offences of robbery, larceny, burglary, where the damage exceedeth 12 *d.* where the offenders are taken in their offences, the offenders are to be killed by losing of their heads, if the people be present after the fact and testify the felony; and in cases not notorious, the judgment is is to be hanged till they be dead.

And if the defendant be a woman ye are to distinguish, whether she hath a husband or not, who is yet living, and also of the action, whether it be mortal or not; for if she be, and was sole without a husband which she hath married at the door of the monastery, and the action be mortal, she shall answer as a man doth; and if she be a feme covert ye are to distinguish, for if she be accused of a mortal crime as principal, she shall answer, and if as an accessary, then ye are to distinguish; for if she be accused of consenting to the felony of her husband, or to any other, her husband not knowing it, yet ye are to distinguish of the crime; of the offences of larceny, of burglary, and of other small offences she may answer, that she was under the command of her husband, and that she could not contradict him; that answer is peremptory in larceny, and if without the knowledge of her husband, she shall answer: and if a woman without her husband be accused to have been in the company of a thief for a minute, or a very small time,

time; ſhe may ſay, that ſhe was not in his company but as his concubine.

Of mortal judgments, of outlawry, of abjuration of the realm, of vanquiſhed in battles for mortal felony, and otherwiſe attainted of a notorious mortal offence, or not notorious, the offence is ſuch that the blood is corrupted; and of the offenders the blood is extinct in every deſcent in right of blood, ſo that nothing can deſcend from them to any of their heirs either next or remote by deſcent, but all ſhall remain to the lords of the fee, from the time they committed the offences, whoever were tenants thereof in the mean time by what contracts ſoever; and all fealties, contracts, and obligations are blotted out thereby; and of fugitives it is according as it is with outlaws, and their goods which remain (beſides what belong to others) remain forfeited to the king.

And the like in remembrance of their felonies, and in hatred of the felons, it is lawful to deſtroy all their manſion-houſes, to eradicate their gardens, to cut down and waſte their woods, to plough up their meadows, or otherwiſe overturn them, which king *Hen.* I. did moderate at the requeſt of the Commons in this manner, for the ſaving of the lands of mortal felons in their hands, of what manor ſoever they were holden, that he ſhould hold the ſame, and ſhould take the profits thereof for one year, and ſhould do waſte if there were not other agreement made with him.

For

For the offence of rape, the judgment was to be hanged till he died, without having regard whether the woman raviſhed were a maiden or not, or without diſtinguiſhing of what condition ſhe was, and whether at the ſuit of the perſon, or at the king's ſuit; which offence before the time of king *Edw.* the ſecond, was by burning of them over the eyes, becauſe the luſt came in by eyes, and the heat of whoredom came from the reins of the lecher.

Seven things do ſtay judgment of death.

1 Falſe judgment, or fooliſh judgment.
2 Falſe teſtimony.
3 Default of better anſwer.
4 The haſt of the king.
5 A woman with child.

The firſt three caſes have reſpite by forty days, the fourth by thirty days, the fifth by forty weeks, or more if the child be not born.

6 Want of diſcretion, as it is of ideots, madmen, and of infants.

7 In poverty, in which caſe ye are to diſtinguiſh of the poverty of the offender, or of thing; for if poor people to avoid famine take victuals to ſuſtain their lives, or cloaths that they die not of cold, ſo that they periſh if they keep not themſelves from death, they are not to be adjudged to death, if it were not in their power to have

have bought their victuals or clothes, for as much as they are warranted so to do by the law of nature; and although the law hath no respect but to the souls of offenders, nevertheless king *Edward* limited the quantity of robbery and larceny in this manner; that is to say, that none should be adjudged to death, if the larceny, or the stealing, or the robbery did not exceed twelve pence sterling; and note that king *Hen.* the first by *Randulph de Glanvile* ordained, that in all mortal actions, that where the action was encountered with an affirmative exception, that the affirmation was first to be received in proof in favour of life; and thence it was that if one man accused another of felony, and he plead that he is not the man, the proof was awarded to the defendant to convince the other of lying, either by his body or otherwise. And so it is if the defendant say that he could not be at the doing of such an act, at the day, place, or year named in the plaint, because he was then in another place, where by presumption he could not do it, or that he could not be there present; or if he saith that the thing came to him by good title, in favour of life the proof belongeth to the defendant peremptorily at his peril, to the overthrowing of the action, and the exception; but if the defendant soly deny the action, in such cases the proof belongeth to the plaintiff.

Of outlaws returned from exile, banished men, and those who have forjured the realm and returned, being taken and kept for a justifiable offence, the judgment is, that they be hanged till they be dead.

CHAP. IV.

SECT. 17.

Of punishments in divers kinds.

THE corporal punishments of death being past, we are to come to corporal punishments venials, which are by open infamous penances; and first of punishments, tallions, or (like for like) which are in three cases, that is to say, in mayhem, wounding, and imprisonment, in which if the pleas be brought in by appeals of felony for revenge only, then belongeth the judgment tallion, or like judgment, as mayhem for mayhem, wound for wound, imprisonment for imprisonment.

And if pardonable in form of a trespass, then these judgments hold place, that the offenders make reasonable satisfaction to the plaintiffs, and afterwards that they be adjudged to do open penance according to the quantity of the offence.

Open

Open penances are these; amendments of highways, causways, bridges, setting them up in pillories or stocks; imprisonment, and abjuration of the realm; exile, banishment, either from off the land, or from the town; from entring into such a place, or from going out of such a place, by ransom of such a penalty, by pecuniary punishment, or by other fine, and such other kinds of judgments penals. And if the offenders be infants, or otherwise in custody, that in such cases the guardians be adjudged to make satisfaction of the damages, and the guardians to betake themselves to the goods of the trespassers; but the open penance is to be suspended so long as they are in ward, so that according to the difference of the offences and the offenders the punishments were in manner as followeth; and first of false judges, who the more greatly offend for as much as they are in a higher degree than other people.

CHAP.

CHAP. IV.

SECT. 18.

Of falſe judges.

OF falſe judges aſſigned, king *Alfred* ordained ſuch judgment, that the wrong they do to God whoſe vicegerents they are, and to the king who is put in ſo noble a a place as is the ſeat of God, and hath given them ſo great dignity as to repreſent the perſon of God, and the conuſance as to judge offenders, that firſt they be adjudged to make ſatisfaction to thoſe they have hurt, and that the remainder of the goods ſhould be to the king, ſaving all other rights, and all their poſſeſſions, with all their purchaſed lands ſhould be forfeited in whoſe hands ſoever they be come, and that they be delivered over to falſe Lucifer, ſo low that they never return to them again, and their bodies that they be puniſhed and baniſhed at the king's pleaſure, and for a mortal falſe judgment that they be hanged as other murderers; and for mayhem, wounding and impriſonment, that they have like for like, and the ſame law, and in the ſame condition.

The judgment of falſe judges ordinaries is not in venial judgments ſo penal, as it is of judges delegates before; but they are to make ſatisfaction to the parties plaintiffs,

and

and to the king they are puniſhable by a pecuniary penalty, and diſabled from all manner of juriſdiction whatſoever; and in caſes mortal, and tallions, according as it hath been ſaid before of other judges.

CHAP. IV.

SECT. 19.

Of perjury.

PErjury is a great offence, of which ye are to diſtinguiſh either of perjury of falſe teſtimony, or by breach of faith, or by each of the oath of fealty; of the firſt perjury ye are to diſtinguiſh, either of perjury mortal, or venial; if of mortal, then the judgment was mortal, to the example of apparent murderers.

And note that in all perſonal actions there belongeth ſuch an award, that due ſatisfaction be made to the plaintiffs, and that the offenders be puniſhed with corporal pains, which pains are to be brought out by ranſom of money; and if of venial perjury, then that they be baniſhed for a time, or for ever; and that their woods, meadows, houſes and gardens be eradicated according to the example of murderers, ſaving that their heirs do not remain diſinherited.

Of the other perjury ye are to diſtinguiſh, as breach of faith to the king, or to another

perſon, and if to the king ye are to diſtinguiſh, whether as his tenant or not; and if the oath of fealty be in reſpect of land, and the fealty be broken in any of the points, then lieth the proceſs and defaults aforeſaid; and if of an oath not in reſpect of land, ye are to diſtinguiſh, whether of the common oath of fealty ſworn to the king, for the remaining in his fee, and then only corporal puniſhment holdeth place, which paſſeth the puniſhment which ſhould be adjudged to others not the king's offices, according to the king's pleaſure.

CHAP. IV.

SECT. 20.

Of the offices of juſtices in Eyre.

THE preſentments of offences are *ex officio* by coroners, by ſheriffs and bailiffs in turns and views of frank-pledge; by enqueſts and ſpecial juſtices, and by kings *ex officio*, or by their chief juſtices, or of their juſtices generals; and becauſe that the one have not power to determine the preſentments of ſuch offences, nor to puniſh the treſpaſſes, and the other who can will not, or do not that duty which of right they may do; or puniſh the innocent and ſpare the guilty; It was anciently ordained,

that the kings by themſeves, or by their chief juſtices, or by general juſtices to hear and determine all pleas, ſhould go circuit every ſeven years, through all ſhires, to receive the rolls of all juſtices aſſigned, of coroners, of enquirers, of eſcheaters, of ſheriffs, of hundredors, and of bailiffs, and of all ſtewards, of all their judgments, enqueſts, preſentments, and all their offices, and to examine thoſe rolls, whether any had erred therein, either in the law, or to the damage of the king, or to the grievance of the people; and thoſe things which they found not determined that they ſhould determine them, and in the Eyre they ſhould redreſs the officers, and puniſh the negligence of them according to the rules of law, and that they ſhould enquire of all offences, which belonged to the king's ſuit, and to his juriſdiction. And note, that notwithſtanding the king had the ſuits of all mortal offences, and of wrongs done to the law, and to the right of his crown, it is not thereby to be underſtood that he ſhould have the ſuit of all offences; but if any one be plaintiff and doth not proceed in his ſuit after the ſame is affirmed, ye are to diſtinguiſh, if it be of a perſonal offence venial it ſufficeth for the defendants, for the nonſuit of the plaintiff doth ſuppoſe ſatisfaction of the damage; and if it be of a mortal offence, yet the king hath not the ſuit, if not by warrant of appeal, or indictment, wherein it behoveth

hoveth to the appellees and indictees that they make haſte to acquit themſelves, for none is bound to anſwer to any manner of action brought by them, becauſe they are barred by an exception of mortal infamy, by being appealed or indicted.

CHAP. IV.

SECT. 21.

Of the articles in Eyre.

EVERY ſhire uſed to be warned by forty days at the leaſt, by general ſummons of the king's coming, where after the eſſoins adjourned, and the aſſize of victuals ſet, and the ordinances proclaimed, and thoſe of franchiſes adjourned, and the jurors called, ſworn, and charged with their articles; and the claimers of franchiſes, and the rolls of the juſtices, of coroners, and of all ſheriffs, and of all other manner of pleas and preſentments after the laſt Eyre taken and received; the firſt thing was to inquire, hear, and determine the articles preſented and brought in the laſt Eyre which were not ended, and afterwards to determine writs and plaints, to deliver viſnes, to examine the rolls, to redreſs the errors, and all other wrongs by right judgments, without reſpect unto any perſon.

All the judges ordinaries, and aſſigned, ſheriffs, bailiffs, and ſtewards of lords of manors, and all other who claimed juriſdiction, which any one could attaint of any wrong done againſt the right rules of law, were condemned for the wrongful judgments, with regard to the diſtinction of the parties grieved.

Coroners, eſcheators, ſheriffs, bailiffs, and other miniſters doing wrong to the king, or to the people, uſed to be puniſhed according to the example of the other, and further according to the king's pleaſure.

The offenders which were found uſing falſe ſcales and falſe meaſures, and gaining by breaking of any aſſize, either of bread, wine, ale, cloth, or other merchandizes, uſed to be ſet in the pillory, and women in the tumbrel, and afterwards were not ſuffered to merchandize at any time, nor could they depart from the place or town to any liberty, becauſe the uſage was contrary to law.

Cut-purſes taken *de facto* in their notorious ſins uſed to be hanged, and for the cutting of purſes and ſtealing of other goods under the value of twelve-pence, and leſs than ſix-pence, one of their ears uſed to be cut off without carrying them to priſon, or before any judge aſſigned, and to baniſh them from the town, or from the manor, for the ſecond offence.

And for their larceny under the value of ſix-pence they uſed to ſet them in the pil-

lory

lory for the firſt offence, and to baniſh them for the ſecond.

In the judgments of perſonal treſpaſſes, venials, as to the taxing of the damages put in plaints, *Martin de Patteſhall* uſed this courſe; the judge uſed to enquire *ex officio* of the jurors, by whom any principal treſpaſs was adjudged before him, the names of all thoſe who were guilty in the firſt degree, and of the acceſſaries, and therein he proceeded to judge the damages according to the number of the indictors, ſo that no plaintiff ſhould recover no more entire damages by plurality of plaints for one ſole treſpaſs againſt the treſpaſſers ſeverally.

CHAP. IV.

SECT. 22.

Of franchiſes.

OF franchiſes note, that becauſe the king doth not hold his rights and dignities of his crown but as an infant, nor a grant from him of any franchiſes is ſo eſtabliſhed that kings cannot repeal them again, ſo as he give ſatisfaction to the value as by warranty; and it is lawful for every one who findeth himſelf grieved to ſue for the king, to ſeiſe every franchiſe forfeited for contumacy; as if the bailiff of a franchiſe do not execution of the return of the ſheriff ac-

cording to the command of the king, by any abuſe, as by uſing his franchiſe too largely, or not duly; by a writ enſuing, it is commanded that the ſheriff enter into the franchiſe, and the king doth recover the ſeiſin thereof, and ſo the ſame becomes guildable which was before a franchiſe.

And all thoſe uſed to forfeit the franchiſe of keeping of a gaol in fee, who by title of franchiſe of infangthief, or of return of writs hurted not without delay, the perſons taken in the places within the franchiſe for felony done in guildables, and ſend them into the gaol in guildable, ſo that the king do not loſe the goods and chattels of the felons, nor his other rights; for the king giveth no franchiſe to his own prejudice, nor to the prejudice of others, eſpecially of return of writs, nor to have the cuſtody of a gaol. An example may be as betwixt two neighbours in a franchiſe, the one cannot keep a priſon to the prejudice of the king, and if he do he forfeiteth the franchiſe.

And it alſo appeareth, that jurors came out of franchiſes before the king and his commiſſioners to guildable and elſewhere at his command, as well upon criminal actions as upon reals.

And if any one receive a felon wittingly into his franchiſe, the ſame is now challengeable.

CHAP.

CHAP. IV.

SECT. 23.

Of ſatisfaction of debts.

IF a plaintiff recover againſt many by judgment, he ſhall have but once damages, as in this caſe; if many perſons owe one debt, and every one be bound in the whole, if one of them make agreement for the ſame, although he do not make a ſpecial agreement for all the debtors, all of them nevertheleſs are diſcharged, becauſe ſatisfaction hath reſpect to the debt, and not to the perſons.

CHAP. IV.

SECT. 24.

Caſes of diſſeiſin.

IF the jurors in petit aſſizes are agreed that one ſhall give their common verdict for all, and if they ſay that they know nothing, nor that the plaintiff ſhall receive nothing becauſe he proved not his action; and if they be of divers opinions they are not therefore to be threatned, nor impriſoned; but they are to be ſevered and diligently examined. And if two jurors be found to agree amongſt all the reſt, it ſufficeth for

him for whom they speak, and they are not to be examined upon the title of the possession, but it is sufficient for the judge to know if the plaintiff were disseised of his land, whether it were rightful or wrongful according to the plaint; for though it were right, nevertheless it was tortious, because the tenant used force where he should have used judgment, and for that he made himself a judge therein, judgment is to be given for the plaintiff, so as he shall recover seisin, such as it is, saving every right by another writ; for an assise lieth not upon assise of the same tenement, betwixt the same parties, nor an attaint upon an attaint; and if the jurors for him, whether they were sworn upon the action, or upon the exceptions, judgment goes for him, and they behove to enquire of the others named in the writ, and if the disseisors came in with force and arms, although they hurt no person's body, all of them nevertheless are to be adjudged to corporal punishment, according to the quantity of the offence; and if they cast him out of his dwelling house, or out of his demesne, the felony of this burglary is punishable at the king's suit, or at the suit of the party; for none is to be cast out of his house where he dwelleth, and which he hath used as his own for a year, without judgment, although he hath no title thereunto but by disseisin, or intrusion, and it sufficeth for force and arms, only the

shewing

ſhewing of arms for to hurt the adverſaries; and under the name of arms are contained bows, arrows, ſaws, lances, ſpears, ſtaves, ſwords, and targets of iron.

The jury ought to enquire of the damages, that is to ſay, of the profits of the tenements ſince the diſſeiſin, and to whoſe hands ſuch profits after came, and of the charges, coſts, and reaſonable expences which the plaintiff hath ſuſtained in his whole recovery, and in all things, and how much he is endamaged in diſtreſs of his goods, and in his honour; and the damages being aſſeſſed, it is to be awarded that the plaintiff recover his ſeiſin, ſuch as it is, according to the view of the recognitors, and the damages; and the diſſeiſors are puniſhable according to the points of the offences.

For the goods found in the tenements whereof none can know the value, as charter, writings, royal treaſure, and ſuch things locked up, the plaintiff hath an action by appeal of robbery, or by a writ of treſpaſs.

In judgment of larceny veniable ſatisfaction is to be made to the plaintiffs, to the double of the value of the things which are ſtolen; and in caſe of robbery, to the value (4 double) or four times value.

CHAP.

CHAP. IV.

SECT. 25.

Of amercements.

APecuniary pain we call an amercement, which follows real offenders, and mixt, and ſometimes are certain, and ſometimes uncertain. An amercement is certain, ſometimes according to the dignity of the perſons, as it is of earls and barons; for he who holdeth an entire earldom is to be amerced one hundred pounds when he is leaſt amerced; and a baron for a barony entire one hundred marks, and he who holdeth leſs, leſs; and more, more; according to the quantity of the tenure.

And ſometimes, by a certain aſſiſe in another caſe, as it is of eſcapes of people impriſoned, in which caſe ye are to diſtinguiſh, of the place; as where one eſcapeth out of the king's priſon, or out of the priſon of another; out of the king's priſon ye are to diſtinguiſh of the cauſe, whether it be mortal or venial, and if mortal, then diſtinguiſh if the cauſe were adjudged or not, and if adjudged by notory of fact, or of right, then the corporal puniſhment is uncertain; for if the keeper, or more be aſſenting to the eſcape, puniſhment of death followeth thereupon; and if the cauſe was not adjudged,

and

and the keeper was not the king's officer, nor aſſented to the eſcape, then the aſſiſe of puniſhment is ſo many ſhillings ſterling or more, according to the uſage of the country, or of the place, or of the perſon.

And if the cauſe be venial, then the eſcape is not puniſhable.

And if the eſcape be from the priſon of others, then ye are to diſtinguiſh of the cauſe, and of the caption, whether the cauſe be mortal or venial, and if mortal, then the pecuniary pain aforeſaid holdeth place; and if the cauſe be venial, there is no puniſhment for the eſcape.

CHAP. IV.

SECT. 26.

Of amercements taxable.

COmmon amercements are taxable by the oaths and affeerments of the peers, of thoſe who fall in *miſericordia*, according to the conſtitution of the charter of franchiſes, which willeth that a freeman be aſſeſſed when he falleth into an amercement according to the quantity of his offence, a merchant ſaving to him his merchandize, and a villain ſaving his wainage; and theſe affeerors are to be choſen by the aſſent of the parties if they will, but the king's officers

ficers are the more grievouſly to be amerced for the breach of their faith, *&c.*

Many caſes there are where corporal puniſhments are bought in by fines of money, and ſuch are called ranſoms, which is as much as to ſay, redemption from corporal pains; whereof ſome fines are common, as for murders, other for perſonal treſpaſſes of towns and commonalties; which fines king *Edward* ordained, that they ſhould be aſſeſſed in the preſence of the juſtices ſo as the names of them be put into the rolls of the juſtices, ſo that the eſtreats may come to the ſheriff to levy the ſame by parcels, and not by total ſummons.

And in caſe where one recovereth debt or damages, king *Edward* enacted, that it ſhould be in the election of them to do execution by levying ſuch debt, and damages of the moveable goods of the debtors at the very value, to the value of the thing in demand, except the oxen, and beaſts of the plough, together with the moiety of lands, and tenements of the debtors, if the goods be held ſufficient by a reaſonable extent until the debt and damages be levied.

Thoſe who are appealed and indicted of felony, and are not to be found, it behoveth that they be proclaimed, and eſpecially before the king, and his juſtices errants, and if they be found guilty, then they are to be commanded to put them in exigent, ſo that the firſt county after the Eyre be the firſt day,

day, and ſo they be demandable at three county-courts until they be outlawed, if they tender not themſelves to the peace.

CHAP. IV.

SECT. 27.

Of the office of juſtices in Eyre.

TO the office of juſtices in Eyre it belongeth eſpecially to enquire by jurors, and by examination of the rolls of the coroners, of all that were outlawed after the laſt Eyre, and after certificate of their names they are to enquire of the names of their pledges, that is to ſay, whether they were in dozein, or in frank pledge, and if their pledges be in the ſame county then are the pledges puniſhable by a pecuniary pain, becauſe they brought not thoſe they took in main-priſe to appear; and if they were elſewhere in dozein, then they are to enquire in whoſe main-priſe they were, and they are puniſhable according to the example of the pledges for the ſame cauſe.

To help the memories of the people are eſcripts, charters and muniments very neceſſary to prove the condition and the points of contracts, gifts, ſales, feoffments and other things.

By

By the ſtatute of *Leuchfred* it was enacted, that one might deny nude contracts made by words, and it was ordained, that plaintiffs ſhould prove their writings, which were denied, and not proveable by neighbours in *England*, and for foreign contracts by battle, or by the ſetting to of other ſeals, or by jurors at the election of the plaintiffs.

If jurors have obſcurely or doubtfully, or not ſufficiently given their verdict in any action or exception; or any of the parties be grieved thereby; there is remedy by a commiſſion of certificate to make the jurors come again, and the parties who are the plaintiffs ought to have under the king's ſeal, and of the judge, and of the parties, the proceedings of the plea before, and ſhew the defect, and the offence of the jurors; in which caſe if the judge by examination find it doubtful, the ſaid doubt is to be reduced to certainty, and the obſcurity to clearneſs, and the error into truth; and ſo the firſt judgment is to be redreſſed.

The

The Contents of the fifth Chapter.

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The defects of the great charter.
The reprehenſions of the ſtatute of Merton *and* Marlbridge.
The reprehenſions of the ſtatute of Weſtminer 1.
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CHAP.

CHAP. V.

SECT. I.

Abuſions of the Common Law.

THERE are many who ſay, that although other realms uſe a written law, yet only *England* uſeth her cuſtoms, and her uſages for law not written; but betwixt rightful and tortious uſages there is a difference, for tortious uſages not warranted by law, nor ſuffered by Holy Scripture, are not at all to be uſed: as for example; thoſe of thieves, whoſe uſages are to rob and ſteal.

And to ſhew ſome abuſes holden for uſages, which are frauds to the law, and repugnants to right, and which are not found juſtifiable by Holy Scripture, is this chapter made of a collection of part of the abuſions of the law, and of perſons erring from the knowledge of the right of law and from lawful uſages.

Abuſion is a diſuſe, or a miſuſe of right uſages turned to abuſes, ſometimes by contrariety and repugnancy to law, ſometimes by too large a uſage thereof.

1 The firſt and chief abuſion is, that the king is above the law, whereas he ought to be ſubject to it, as it is contained in his oath.

2 It is an abuſe, that whereas parliaments ought to be, for the ſalvation of the ſouls of treſpaſſers, twice in the year at *London*, that they are there but very ſeldom, and at the pleaſure of the king; for ſubſidies and collections of treaſure, and where the ordinances ought to be made by the aſſent of the king, and of his earls, they are now made by the king and his clerks, and by aliens, and others who dare not contradict the king, but deſire to pleaſe him, and to counſel him for his profit, though the counſel be not covenable for the common people, without calling the counties thereunto, and without following the rules of law, whereby it followeth that many ordinances are grounded more upon pleaſure than upon law.

3 It is an abuſe that the laws; and the cuſtoms of the realm, with their occaſions, are not put into writing, whereby they may be known, ſo as they might be known by all men.

4 It is an abuſe, that force holds in diſſeiſins after the third day of peaceable ſeiſin, for as much as he is not worthy to be aided by the law, who flyeth from judgment, and uſeth force.

5 It is an abuſe, that juſtice is delayed in the king's court, more than elſewhere.

6 It is an abuſe to ſuffer any to be in the realm above forty days, who is of the age of fourteen years, *Engliſh* or alien, if he be not ſworn to the king by an oath of fealty, and in ſome pledge and dozein.

7 It is an abuſe, that clerks and women are exempted to make the ſaid oath to the king, ſeeing the king taketh their homage and fealty for lands.

8 It is an abuſe to hold an eſcape out of priſon, or the breach of the gaol, to be a mortal offence, for that uſage is not warranted by any law, nor is it uſed in any place but within this realm and in *France*, for as much as one is warranted to do it by the law of nature.

9 It is an abuſe to ſuffer ſo many forms of writs to be pleadable, and therein eſpecially that the writs are cloſe, and not patents as the writs of right; and in that they are made with interlinings and raſure, and otherwiſe vicious.

10 It is an abuſe that the money is not quarterable, that it is not ſilver, that it is held payable if the foreign circle be not whole, to allay the money *per* 18 d. and make paying of lead to every, *&c.*

11 It is an abuſe that the king takes more than twelve pence for the exchange of twenty ſhillings in the pound.

12 It is an abuſe that no pound is ſuffered to weigh twenty-five ſhillings, or more than twelve ounces.

13 It is an abuſe that Treaſon is not adjudged

adjudged more by appeals than it is.

14 It is an abuſe that a man who hath done man-ſlaughter of neceſſity, or with the peace, or not feloniouſly, is detained and kept in priſon until he hath purchaſed the king's charter of pardon of death; as it is for miſchance.

15 It is an abuſe to hold the moveable goods of flyers forfeited before they be attainted of the felony by outlawry, or otherwiſe.

16 It is an abuſe to outlaw a man before it hath been enquired by the oaths of neighbours.

17 It is an abuſe to ſuffer a man attainted of felony to be an approver, and to have a voice as a true man, and that clerks, women, infants, and others who cannot combat are ſuffered to be approvers.

18 It is an abuſe that others receive the appeals of approvers, than coroners, and that they are ſuffered to appeal oftner than once, or by diſtreſs or otherwiſe, or in any manner falſly.

19 It is an abuſe that the Juſtices drive a true man to be tried by his country, where he profereth to defend himſelf againſt the approver by battle.

20 It is an abuſe to force people appealed by approvers to acquittals, where the approver put in his appeals, if he be not thereof elſewhere indicted, or after the lying of the approver attainted, or after the death of the approver.

21 It is an abuſe to ſuffer an approver to live, after he ſhall be attainted of a falſe appeal.

22 It is an abuſe to ſuffer thieves, and known and notorious felons, to be defended in ſanctuaries.

23 It is an abuſe that thoſe felons who are forjudged the realm are not ſuffered to chuſe their port and paſſage out of the realm, and to limit their journies.

24 It is an abuſe that they enter into the ſea, and from the ſea, the church next the ſea, and that entries into great places are denied them, and that they have not the privilege of pilgrims.

25 It is abuſe to adjudge murder for default of *Engleſhire*, ſince murder ought to be the *Engliſh* puniſhment of an alien.

26 It is an abuſe that acquittances of payments made to the king in the Exchequer are by tallies, and not by the ſeal appointed for it.

27 It is abuſe that the king's officers of the Exchequer, have juriſdiction of other things than the king's monies, of his fees, and of his franchiſes, without an original writ out of the chancery under white wax.

28 It is an abuſe that the king's debts lie dormant, and are delayed to be levied by eſtreats, ſince the arrears of ſheriffs, and of other the king's receivers are to be levied without delay upon thoſe who prefer them, if they themſelves be not ſufficient, and the arrearages of the debts of others are to be

levied

levied upon their ſureties where the principals are not ſufficient to pay the arrearages, the amercements are liable upon the aſſeſſors if the principals are not ſufficient; and ſo it is of fines, and all other the king's debts; whereby it appeareth that no debt ought to be much behind, in ſo much as ſome think that none are chargeable with an old debt if not of malice, or by negligence of the king's officers.

29 It is an abuſe that they of the Exchequer, or other, receive attornies, or hold conuſance without an original writ out of the chancery, which none can do without juriſdiction.

30 It is an abuſe that freemen and freeholders have ordinary juriſdiction, but in the courts of lords of manors, or of hundreds or counties.

31 It is an abuſe to amerce any man by reaſon of a preſentment in perſonal treſpaſs, in as much as no man is to be amerced but for the offence in a real or mixt action.

32 It is an abuſe to amerce any man by a preſentment made of leſs than twelve ſworn freemen.

33 It is an abuſe to aſſeſs an amercement certain, without the affeerment of freemen ſworn to it.

34 It is an abuſe to affeer amercements in the abſence of thoſe who are to be amerced.

35 It is an abuſe to charge the jurors with

any article touching wrong done betwixt neighbour and neighbour.

36 It is abuſe to believe any one hath juriſdiction, if a commiſſion give it not.

37 It is an abuſe to obey the judge who is appealed of doing wrong, the example whereof appeareth in the old writ of right, *Et niſi feceris vicecomes faciat.*

38 It is abuſe that a freeman be made the king's officer by any election againſt his will.

39 It is an abuſe that the ſalaries of pleaders be not certain.

40 It is an abuſe that the defendants have not amends of wrongful plaintiffs.

41 It is an abuſe that pleaders are ſpared of oaths according to the points.

42 It is abuſe to ſuſpend a pleader if he be not attaint of a treſpaſs, for which he is condemnable to corporal puniſhment.

43 It is abuſe to ſummon a man for a perſonal offence.

44 It is abuſe to adjudge a man to death by ſuitors, if not in caſes ſo known, that there need no anſwer.

45 It is an abuſe to bring the appeal elſewhere than before the coroner of the county, and that appeareth by the writ of appeal, as a writ grounded upon error.

46 It is abuſe to let to bail a man appealed, or indicted of a mortal offence, by pledges.

47 It is an abuſe to determine the appeals of felony by judges, ordinaries, ſuitors,

48 It

48 It is abuſe that all perſons are commonly receivable in appeals of felony.

49 It is abuſe that all infants within age are in ward.

50 It is an abuſe that people may alien their inheritances from their heirs further than the grants, or their purchaſe of lands make mention, for none can make an aſſignee, if it be not ſpecified in the grant.

51 It is abuſe that the inheritances of heirs females are held in ward (though it be of knights ſervice) as of heirs males, ſince a woman is at age at 14 years.

52 It is abuſe that gaolers or their ſovereigns plunder priſoners, or take from them other things than their arms.

53 It is abuſe that priſoners or others for them pay any thing for their entries into the gaol, or for their coming out.

54 It is abuſe that a priſoner is laden with irons, or put to pain before he be attainted of the felony.

55 It is abuſe that the gaols are not delivered of the priſoners, who are deliverable without delay, without a writ.

56 It is abuſe to make a man to anſwer to the king's ſuit where he is not indicted, nor appealed.

57 It is abuſe to impriſon any other than a man indicted or appealed, without a ſpecial warrant, in caſe for want of pledges or mainpriſors.

58 It is abuſe that juſtices deliver priſoners not taken before the date of their war-

rants, ſince the king's intention was not but of thoſe who are then kept in priſon.

59 It is abuſe that the writ of *Odio & atia* take no place but in murder.

60 It is abuſe that that writ lieth for indictees.

61 It is abuſe that appellees or indictees of mortal crime are got out of priſon by bail, or thoſe who are condemned to corporal puniſhment before they do their penance, or that they have bought in the ſame by fine and ranſom.

62 It is abuſe that the writs *Sicut alias & ſicut pluries* paſs the ſeal, in caſe where it ſhould make thoſe officers inobedient of right, and to the king, and ſhould charge others to do ſuch commandment.

63 It is abuſe to put theſe words in writs, *Niſi captus ſit per ſpeciale præceptum noſtrum, vel capitalis juſticiarii noſtri, vel pro foreſta noſtra, &c.* for no ſpecial commandment ought to exceed the common law.

64 It is abuſe to ſuffer the judges to be plaintiffs for the king.

65 It is abuſe that aliens, or others who have not ſworn fealty to the king or infamous perſons, or indicted or appealed of mortal crime, or who have not an able commiſſion, or after any wrong done, or after judgment given, be ſuffered to have juriſdiction, or to judge out of the points ſpecified in their commiſſions.

66 It

66 It is abuſe that in appeals by pleaders are the places, and the countries, and the hours of the days, and that it is againſt the peace, ſince every offence is againſt the peace, and ſuch other words needleſs.

67 It is abuſe to abate ſufficient appeals, according to the ſtatute of *Glouceſter*.

68 It is abuſe that the remedial writs are ſaleable, and that the king commands the ſheriff, that he take ſureties to his uſe for the writ, for and by the purchaſe of theſe writs one may deſtroy his enemy wrongfully; and becauſe that ſuch fines and penalties run in eſtreats, though they do nothing but hurt to the purchaſer thereof.

69 It is abuſe that foreigners are not receivable in actions by ſureties of freemen, who have not wherewith to find pledges.

70 It is abuſe to diſtrain in perſonal actions, where the profit of the iſſues comes to the king, and no profit accrueth to the plaintiffs.

71 It is abuſe that any plaint is received to be heard without ſureties preſent, to teſtify the plaint to be true.

72 It is abuſe, that it is ſaid that villainage is not a frank tenement, and that an aſſize lieth not of an ejector for term of years, as well as it doth of a frank tenement for term of life, or in fee; for a villain and a a ſlave are not all one, either in name or ſignification, for as much as every freeman

may

may hold in villainage to him and his heirs, performing the ſervices and charges of the fees.

73 It is abuſe to hold that ſeiſin accrued not to the purchaſer when the donor left his goods, for as a contract of marriage is good by the conſent of the wills of men and women, although that one of them repent, and after the marriage would withdraw himſelf, but he cannot thereby diſſolve the contract; ſo as well it ſufficeth to make the contract by the delivery of ſeiſin as by the celebration of the marriage, although the purchaſer have no other ſeiſin by taking the eſplees, nor any deed, nor writing to teſtify the bargain; and if it were that a woman after the marriage were raviſhed and conſented thereto, and the huſband repleve her, and the raviſher anſwering to the contract ſay, that the huſband had no right nor action, becauſe he was never fully ſeiſed by taking the eſplees; nor had no deed: or ſaid, that he was never out of ſeiſin of the woman becauſe ſhe was cloathed with his robes, and by her robe ſhe remained in his ſeiſin; this exception nothing availeth him to excuſe his wrong no more than in this caſe. If a man buy a horſe, and agree with the ſeller, and the ſeller deliver the ſame to the buyer, notwithſtanding that the ſeller repent of the bargain, and forceably take back the horſe, although the buyer hath no

action

action for the ſame, becauſe he remained always ſeiſed thereof at will; ſuch exception is not good.

74 It is abuſe to think that contracts for goods not moveables are otherwiſe than for moveable goods.

75 It is abuſe to think that ſeiſin accrueth not as ſoon to a purchaſer of his purchaſe, as to an heir of his inheritance, ſince the law requires but three things in contracts. 1 The agreement of the wills. 2 Satisfaction to the donor. 3 Delivery of the poſſeſſion and gift. If a tranſmutation of ſeiſin be given to the purchaſer by the donor at the hour of one of the clock, and the purchaſer dieth at the hour of three of the clock he dieth as well ſeiſed of the tenement as he ſhould be of a woman, or a horſe, though the donor have not departed with and removed his chattels; and it ſhall never be a good plea for him to ſay, that the freehold after the tranſmutation of ſeiſin by a ſimple livery remained in the donor, after this livery of the tenement; but if the agreement of the donor be not performed according to the contract, then he may help himſelf thereby.

76 It is abuſe to think that one cannot recover a term for years; nor preſentments to churches in manner of diſſeiſin, ſince many reaſons may avail to re-diſſeiſors.

77 It is abuſe that attaints are not granted in chancery without difficulty, to attaint all

falſe

falſe jurors, as well in all other actions perſonals, reals and mixt, as in aſſizes brought.

78 It is abuſe to drive a diſtreſs out of the hundred.

79 It is abuſe to make the view of the diſtreſs to bailiffs, in that a plaint will ſuffice, and a court, and that he is yet ſeiſed thereof.

80 It is abuſe that we do not ſue for a tortious diſtrefs by way of felony, and that one attaint not theſe robbers at the king's ſuit.

81 It is abuſe that vicious contracts are by agreements maintained by law, as forbidden of offence. Is not uſury an offence? is not impriſonment an offence? how can one bind himſelf to uſury, or to impriſonment, or a diſſeiſin, if he do not offend.

82 It is abuſe that advowſons of charters are aliened by law for years in mortgage, or to farm, or are partable.

83 It is abuſe that leaſes of farms are not longer than forty years, ſince continuance of ſeiſin by length of time doth diſinherit no man.

84 It is abuſe that no land is let to farm or in fee, or for years rendring rent by the year, more than the fourth part.

85 It is abuſe to outlaw a man for a default, in caſe where the principal cauſe is not felony.

86 It

86 It is abuſe that auditors are appointed by the lords to hear accounts without the aſſent of bailiffs.

87 It is abuſe that bailiffs have no recovery of damages from tortious auditors.

88 It is abuſe that regard is had to the perſons, when ſuch law is not for bailiffs againſt their lords, as *e contra* in the right of debts due by the one to the other.

89 It is abuſe that a man may challenge one for his nief to whom he never found ſuſtenance, in as much as a villain is not a villain but ſo long as he remaineth in cuſtody; and ſince none can challenge his villain for villainage though he be in his cuſtody, if he find not ſuſtenance to his villain, or ſend him to ſome land in his manor where he may gain his living, or otherwiſe retain him in his ſervice.

90 It is abuſe that villains are frank-pledges, or pledges of freemen.

91 It is abuſe that others ſuffer villains to be in their views of frank-pledges.

92 It is abuſe that the lords ſuffer their villains to plead, or be impleaded without them, for a villain is not amerceable in any other court, becauſe he can loſe nothing, as he who hath nothing proper of his own.

93 It is abuſe to hold villains for ſlaves, and this abuſe cauſeth great deſtruction of poor people, great poverty, and is a great offence.

94 It

94 It is abuſe that a man is ſummoned who is no freeholder.

95 It is abuſe to ſummon a man elſewhere than in the land contained in the demand, if it contain land.

96 It is abuſe that a man travel at his own charges, by any ſummons perſonal.

97 It is abuſe that a juſtice or other make a ſummons, who is not a freeholder within the county.

98 It is abuſe to ſummon men without giving them reaſonable warning upon what to anſwer.

99 It is abuſe that falſe cauſes of eſſoins are admitted, for as much as the law alloweth falſity in no caſe.

100 It is abuſe that an eſſoiner is admitted in a perſonal action to the defendant, ſince one is mainprized to appear in court by mainpriſors.

101 It is an abuſe to receive an eſſoin caſt in by an infant within age.

102 It is an abuſe to receive an attorney, where no power ſo to do is given by writ out of the chancery.

103 It is abuſe to receive an attorney, where the plea is not to be judged in the preſence of the parties, if not in caſe where one maketh an attorney general.

104 It is abuſe that none can make an attorney in perſonal actions, where corporal puniſhment is to be awarded.

105 It is abuſe to receive exceptions in judgments, if they be not ſufficiently pronounced,

nounced, for from the order of the exception rarely ariſeth clear judgment.

106 It is abuſe to allow a warrant of voucher to a thief, or in other perſonal action.

107 It is abuſe that judges aſſigned ſhew not the parties pleading their warrants, or of his power, when they demand it.

108 It is abuſe that juſtices and their officers, who kill people by falſe judgment, be not deſtroyed as other murderers, which king *Alfred* cauſed to be done, who cauſed forty-four juſtices in one year to be hanged as murderers for their falſe judgment.

1 He hanged *Darling* becauſe he had judged *Sidulf* to death, for the retreat of *Edulf* his ſon, who afterwards acquitted him of the fact.

2 He hanged *Segnor* who judged *Ulfe* to death after ſufficient acquittal.

3 He hanged *Cadwine*, becauſe that he judged *Hackwy* to death without the conſent of all the jurors, and whereas he ſtood upon the jury of twelve men, and becauſe three would have ſaved him againſt the nine, *Codwine* removed the three, and put others upon the jury, upon whom *Hackwy* put not himſelf.

4 He hanged *Cole*, becauſe he judged *Ive* to death when he was a mad-man.

5 He hanged *Malme*, becauſe he judged *Prat* to death upon a falſe ſuggeſtion that he commited the felony.

6 He

6 He hanged *Athulf* becauſe he cauſed *Copping* to be hanged before the age of one and twenty years.

7 He hanged *Markes* becauſe he judged *During* to death by twelve men who were not ſworn.

8 He hanged *Oſtline* becauſe he judged *Seaman* to death by a falſe warrant, grounded upon falſe ſuggeſtion, which ſuppoſed *Seaman* to be a perſon in the warrant, which he was not.

9 He hanged *Billing*, becauſe he judged *Leſton* to death by fraud, in this manner he ſaid to the people, Sir, all ye here but he who aſſiſted to kill the man, and becauſe that *Leſton* did not ſit with the other he him commanded to be hanged, and ſaid that he did aſſiſt, where he knew he did not aſſiſt to kill him.

10 He hanged *Seafaule* becauſe he judged *Olding* to death for not anſwering.

11 He hanged *Thurſton* becauſe he judged *Thurguer* to death by a verdict of enqueſt, taken *ex officio* without iſſue joined.

12 He hanged *Athelſton*, becauſe he judged *Herbert* to death for an offence not mortal.

13 He hanged *Rombold* becauſe he judged *Liſchild*, in a caſe not notorious, without appeal, and without indictment.

14 He hanged *Rolfe*, becauſe he judged *Dunſtan* to die for an eſcape out of priſon.

15 He hanged *Freburne* becauſe he judged *Harpin* to die, whereas the jury were in doubt of their verdict, for in doubtful cauſes one ought rather to ſave than to condemn.

He

16 He hanged *Seabright* who judged *Aihebbrus* to death, becauſe he condemned one by a faiſe judgment mortal.

17 He hanged *Hale* becauſe he ſaved *Triſtram* the ſheriff from death, who took to the king's uſe from another's goods againſt his will, for as much as any ſuch taking from another againſt his will, and robbery hath no difference.

18 He hanged *Arnold* becauſe he ſaved *Boyliffe*, who robbed the people by colour of diſtreſſes, whereof ſome were by ſelling diſtreſſes, ſome by extortion of fines, as if betwixt extortion of fines, releaſing of tortious diſtreſſes, and robbery there were difference.

19 He hanged *Erkinwald* becauſe he hanged *Franklin*, for naught elſe but becauſe he taught to him who vanquiſhed by battle mortal to ſay the word of cravant.

20 He hanged *Bermond* becauſe he cauſed *Garbolt* to be beheaded by his judgment in *England*, for that for which he was outlawed in *Ireland*.

21 He hanged *Alkman* becauſe he ſaved *Cateman* by colour of diſſeiſin, who was attainted of burglary.

22 He hanged *Saxmond* becauſe he hanged *Barrold* in *England*, where the king's writ runneth for a fact which he did in the ſame land where the king's writ did not run.

23 He hanged *Alflet* becauſe he judged a clerk to death, over whom he had not cognizance.

24 He hanged *Piron* becauſe he judged

Hanting to death becauſe he gave judgment in appeal before the forty days pendant the appeal, by a writ of falſe judgment before the king.

25 He hanged *Diling* becauſe he cauſed *Eldon* to be hanged, who killed a man by misfortune.

26 He hanged *Oſwin* becauſe he judged *Fulcher* to death out of court.

27 He hanged *Muclin*, becauſe he hanged *Helgrave* by warrant of indictment not ſpecial.

28 He hanged *Horne* becauſe he hanged *Simin* at days forbidden.

29 He hanged *Wolmer* becauſe he judged *Graunt* to death by colour of a larceny of a thing, which he had received by title of bailment.

30 He hanged *Therberne* becauſe he judged *Oſgot* to death for a fact, whereof he was acquitted before, againſt the ſame plaintiff, which acquittance he tendred to aver by oath, and becauſe he would not aver it by record, *Therberne* would not allow of the acquittal which he tendred him.

31 He hanged *Wolſtor* becauſe he adjudged *Haubert* to death at the ſuit of the king, for a fact which *Haubert* confeſſed, and of which the king gave him his pardon, but he had no charter thereof, nevertheleſs he vouched the king to warrant it, and further tendred to aver it by inrolment of the chancery.

32 He hanged *Oſkitell* becauſe he judged

Catling to death, by the record of the coroner, whereby replication allowable the plea did not hold. And the caſe was ſuch, *Catling* was taken and puniſhed ſo much, as he confeſt he had mortally offended, and that to be quitted of the pain; and *Oskitell* adjudged him to death upon his confeſſion which he had made to the coroner, without trial of the truth of the pain, or the fact. And further, he cauſed the coroners and officers acceſſaries to be apprehended, who hanged the people, and all thoſe who might have hindred the falſe judgment, and did not hinder the ſame in all caſes; for he hanged all the judges who had falſly ſaved a man guilty of death, or had falſly hanged any man againſt law, or any reaſonable exception.

33 He hanged the ſuitors of *Calevot*, becauſe they had adjudged a man to death in a caſe not notorious, although he were guilty thereof; for no man can judge within the realm but the king, or his commiſſaries, except thoſe lords in whoſe lordſhips the king's writ doth not run.

34 He hanged the ſuitors of *Dorceſter*, becauſe they judged a man to death by jurors in their liberty, for a felony which he did out of the liberty, and whereof they had not the conuſance by reaſon of foreignty.

35 He hanged the ſuitors of *Cirenceſter*, becauſe they kept a man ſo long in priſon, that he died in priſon, who would have ac-

quitted himſelf by foreigners, that he offended not felonioufly.

36 In his time the ſuitors of *Doncaſter* loſt their juriſdiction, beſides other puniſhments, becauſe they held pleas forbidden by the cuſtoms of the realm to judges, ordinaries, and ſuitors to hold.

37 In his time *Colgrin* loſt his franchiſe of enfangthief, becauſe he would not ſend a thief to the common gaol of the county, who was taken within his liberty for a felony done out of the liberty in guildable.

38 In his time *Buttolphe* loſt his view of frank-pledges, becauſe he charged the jurors with other articles than thoſe which belonged to the view, and amerced people in perſonal actions where one was not to be amerced by a pecuniary puniſhment. And accordingly he cauſed mortal rewards to criminal judges for wrongful mortal judgments, and ſo he did for wrongful judgments venials. Impriſonment for wrongful impriſonments, and like for like, with the other puniſhments; for he delivered *Thelweld* to priſon, becauſe he judged men to priſon for an offence not mortal.

39 He judged *Lithing* to priſon, becauſe he impriſoned *Herbote* for the offence of his wife.

He judged *Rutwood* to priſon, becauſe he impriſoned *Olde* for the king's debt.

On the other ſide he cut off the hand of *Haulf*, becauſe he ſaved *Armock*'s hand, who

was

was attainted before him that he had feloniouſly wounded *Richbold*.

He judged *Edulfe* to be wounded, becauſe he judged not *Arnold* to be wounded, who feloniouſly had wounded *Aldens*.

In leſſer offences he did not meddle with the judgments, but diſinherited the juſtices, and removed them according to the points of thoſe ſtatutes in all points where he could underſtand that they had paſſed their juriſdiction, or the bounds of their delegacy, or of their commiſſion; or had concealed fines, or amercements, or other thing which belonged to the king; or had releaſed or increaſed any puniſhment contrary to law, or procured the exerciſing or pleading without warrant, either by the property, by warrant of writ, or of a plaint of the poſſeſſion, or *e contra*; or in the venial actions by words of felony, or *e contra*, or had ſent to no party a tranſcript of his plea at the journey, or any of the parties wrongfully grieved, or done any other wrong in diſ-allowance of a reaſonable exception of the parties, or to the judgment.

In his time every plaintiff might have a commiſſion and a writ to his ſheriff, to the lord of the fee, or to certain juſtices aſſigned upon every wrong which was done.

In his time law was haſtened from day to day, ſo that above fifteen days there was no default nor eſſoin adjournable.

In his time the parties might carry away the parts of their pleas under the ſeal of the judges, or the adverſe parties.

In his time there was no ſtay of writs, all remedial writs were grantable, as of debt by virtue of an oath.

In his time the judges uſed to take twelve pence of every plaintiff at the journey.

In his time plaintiffs recovered not only damages of the iſſues of the poſſeſſions, and of the fees, but recovered coſts as to the hurts, and as much as one might lawfully tax, by the occaſion of ſuch a fact.

109 It is abuſe that ſuch a multitude of clerks are ſuffered to be made, whereby the king's juriſdiction is overthrown.

110 It is abuſe that clerks have leaſes of that which belongs to the temporalty, and hold lay fees.

111 It is abuſe that pleas hold upon Sundays, or other days forbidden, or before ſun-riſing, or in the night time in diſhoneſt places.

112 It is abuſe that none anſwer to a felony, or other perſonal action of treſpaſs or ſcandal, before his age of one and twenty years.

113 It is abuſe that when the action is affirmative to take the proof againſt the anſwer, or plea affirmative.

114 It is abuſe that a man be accuſed of life and member, *ex officio*, without ſuit or without indictments.

115 It is abuſe that the juſtices ſhew not the indictments to thoſe who are indicted, if they require the ſame.

116 It is abuſe that no man in *England* doth anſwer for a thing done out of the realm, *et e contra*, or in a privileged place, where the king's writ runneth not, for a thing done to a foreigner, *et e contra*, or within a place within a franchiſe, for a thing done in guildable.

117 It is abuſe that rape is a mortal offence.

118 It is abuſe that rape extends to others than virgins.

119 It is abuſe to outlaw a man if not for felony.

120 It is abuſe that one take in *England* any one outlawed in *Ireland*, or elſewhere out of the realm; or that one is put out of his fee by judgment of law of judges ordinaries, ſuitors.

121 It is abuſe to count of ſo long time, whereof none can teſtify the hearing or ſeeing, which is not to endure generally above forty years.

122 It is abuſe that a man have an action perſonal from a longer time than the laſt Eyre.

123 It is abuſe of the writ of account, for which every one may impriſon another wrongfully.

124 It is abuſe that one is bound to render an account of iſſues of land whereof he is guardian by title of law.

125 It is abuſe that the writ of *Ne in juſte vexes* is ſo out of uſe.

126 It is abuſe that battles be not in perſonal actions as well as in felonies.

127 It is abuſe that proofs and purgations be not by the miracle of God where other proof faileth.

128 It is abuſe to join battle betwixt perſons who are not admitted to wage battle.

129 It is abuſe that a knight is otherwiſe armed than another man in a combat.

130 It is abuſe that judges have cognizance by original writ, or warrant by vouchers, or in others to which his juriſdiction extendeth not.

131 It is abuſe to ſuffer a voucher to warranty in the king's writ of *Quo warranto.*

132 It is abuſe that thoſe who are found uſurers by indictments after their deaths are ſuffered to be buried in ſanctuaries, and that the lands do not eſcheat to the lords of the fees.

133 It is abuſe that vicious obligations drive the authors to perſonal damages, in as much as they are voidables.

134 It is abuſe to compel jurors, witneſſes, to ſay that which they know not, by diſtreſs of fine and impriſonment after their verdict, when they could not ſay any thing.

135 It is abuſe to uſe the words (to their knowledge) in their oath, to make the jurors ſpeak upon thoughts, ſince the

the chief words of their oaths be that they ſpeak the truth.

136 It is abuſe that one examine not the jurors, though they find at leaſt two to agree.

137 It is abuſe to put more words in the doing of homage; but thus, I become your man, for the land which I claim to hold of you.

138 It is abuſe to anſwer or appear by attorney.

139 It is abuſe to make juſtices ſuch parties without the writ in the king's preſence, if not with the aſſent of the parties.

140 It is abuſe that the writs of *audita querela*, and conſpiracy and others contain not the ſubſtance of the plaints.

141 It is abuſe that the juſtices of the bench meddle with more pleas than of wrong done againſt fines, grand aſſiſes, tranſlation of pleas out of lower courts, and of darrein preſentment, and of the rights of the king, queen, and their allies.

142 It is abuſe to uſe a Pone when their cauſes are diſcuſſed, if the parties challenge the ſame, for a lying purchaſer ought not to have benefit of his leaſings.

143 It is abuſe to ſue forth grand diſtreſſes in pleas of attachments, whereof the defaults are to the profit of the king, and not of the plaintiffs.

144 It is abuſe that trepaſſers who have nothing, are not baniſhed from towns, counties, manors,

manors, and hundreds as they uſed to be.

145 It is abuſe to hold that a *petit cape* maketh other title but to ſave every right in real action, not in others.

146 It is abuſe that the iſſues of grand diſtreſſes in mixt actions come not to the profit of the lords of the fees, and others who have courts, as they do to the king, of pleas moved in his court upon the ſame actions.

147 It is abuſe to think the ſame puniſhment is to be to mainpriſors, as to principals who make default, whereas they are amerceable only in courts.

148 It is abuſe to amerce a man in pleſive of fee, or of ſervice, going out of the land by default in a perſonal action or real; for outlawry or loſs of land is ſufficient puniſhment.

149 It is abuſe that ſheriffs do not execution of writs *vicecountiels*, in as much as the plaintiffs have found pledges *de proſequend.* where there is no mention to take ſureties.

150 It is abuſe to diſtrain for arrearages of ſervices iſſuing out of lands, moveable goods, whereas no diſtreſs ought to be but in the land only.

151 It is abuſe that the tenant may without puniſhment enfeoff a third perſon of the land, of his lord in prejudice of him, or do other thing, or ſay any thing againſt the points of his oath of fealty.

152 It

152 It is abuſe to ſuffer a man who is a champion to be a witneſs.

153 It is abuſe that none have recovery of wrong done by the king, or the queen, but at the king's pleaſure.

154 It is abuſe to judge a man to divers puniſhments for one treſpaſs, as to a corporal puniſhment and to a ranſom, ſince ranſom is but a redemption from corporal puniſhment by payment of a fine of money.

155 It is abuſe that people defamed of offence are not barred from making oaths, and of their dignities, and of their other honors.

And divers other abuſes appear by thoſe who well underſtand the writ before written.

CHAP. V.

SECT. 2.

The defects of the Great Charter.

SEeing how the law of this realm, founded upon forty points of the great charter of liberties, is damnably diſuſed by the governors of the law, and by ſtatutes afterwards made contrary to ſome of the points, to ſhew the defects or defaults of the points aforeſaid, and the errors of ſome ſtatutes, I have put in memory this chapter of the defect, and reprehenſions of ſtatutes; and firſt of

of the defects of the points of the great charter.

To the point, that the church of *England* ſhall have all her rights and liberties inviolable; for firſt it were neceſſary to ordain a corporal puniſhment, and namely to the lay judges, the king's miniſters, and others, who judge clerks for mortal crimes to corporal puniſhments, infamatories, and do detain their goods after their purgation, and to thoſe ſecular judges who take upon them cognizance in cauſes of matrimony, and teſtaments, or other ſpecial things.

The other point is, that every freeman of the realm inherit the liberties of the charter, and whereof every one is diſſeiſed as of his freehold, which is not adjudged according to the points following, there lieth no recovery of damages by the aſſize of *novel diſſeiſin*.

A third point ſeemeth to be defective, for as the relief of an earldom entire was to decreaſe in him who held leſs, ſo it ſeemeth that that certainty was to encreaſe as much if an earl held more; ſo as he who held two earldoms, and who held an earldom and a barony, ſhall pay as an earldom and as a barony; and ſo of other fees if they be not expreſſed in the charter, that the fine of one hundred pound be not an earldom for no point increaſed, and ſo of other certainties.

The fourth point is defective (for although it be that ſuch a point be grounded upon law,

of

law, to bind the lord of fees to warranties by taking of ſuch homages, whether they took them of the right heirs or not) becauſe it is not expreſſed who ſhould be guardian of the fees in time of vacancy, and have the iſſues in the mean time in caſe where the right heirs fly from their lords, or cannot or will not do their homage.

In the points of wards it is defective, for as much as no difference is expreſſed between the heirs males, and the heirs females, for a woman hath her age when ſhe is fully of fourteen years, and the ſeven years beſides were not ordained firſt but for the males, who before the age of one and twenty years were not ſufficient to bear arms for the defence of the realm.

And note that every guardian is chargeable to three things: 1 That he maintain the infant ſufficiently. 2 That he maintain his rights and inheritance without waſte. 3 That he anſwer and give ſatisfaction of the treſpaſſes done by the infants.

The defect of the point of diſparagements appeareth amongſt the ſtatutes of *Merton.*

And the default of frank benches and widows in the ſame manner, in which point it is ſufficiently expreſſed that no woman is dowable, if ſhe have not been ſolemnly eſpouſed at the door of the monaſtery and there endowed.

In

In the point which requireth that the city of *London* have its ancient liberties, and her free cuſtoms, it is to be interpreted in this manner; that the citizens have their liberties whereof they are inherited by lawful title of the gifts and confirmations of kings, which they have not forfeited by any abuſe, and that they may have their liberties and cuſtoms which are ſufferable by law, and not repugnant to the law. And where it is ſaid (of *London*) that the interpretation be as well of the cinque ports, and of other places.

The point which forbiddeth tortious diſtreſſes for fees is covenable in itſelf, but the ſame ſhall not grieve any man of the realm who hath tenements, that it is no treſpaſs in him, or by his miniſters, as appeareth in the chapter of *Nativo habendo*.

The point which forbiddeth that Common pleas follow not our court, is to be interpreted in this manner; that the people ſhall not travel to ſue in the king's houſehold in the country, as they uſed to do. But this point willeth, that the plaintiffs have commiſſions to ſheriffs, to lords of manors, and to juſtices aſſigned, ſo that right be done to the parties in certain places, where the parties and jurors may be the leſs travelled.

Although it be that the chapter command that *petit* aſſizes be taken in their counties, being made for the eaſe of jurors, yet

yet it is diſuſed, in as much as the juſtices make the jurors to come from the furtheſt marches of the counties, whereas it were better that the juſtices rode from hundred to hundred, than ſo to travel the people.

The point of amercements is miſuſed by juſtices, ſheriffs, bailiffs, ſtewards, and others, who amerce the people in certain in this manner, putting ſuch a one to ſo much for a contempt or other treſpaſs without a perſonal treſpaſs, and without the affeerment of the people ſworn to it, and without ſpecifying the manner and the quality of the contempt. *Cap.* 14.

Again, where the affeerors ought to be choſen with the aſſent of thoſe who are amerced, and in a common place, the lords make the affeerors to come to their houſes to affeer the amercements according to their pleaſures.

The point which forbiddeth that rivers be defended is diſuſed, for many rivers are now appropriate and gotten, and ſo put in defence, which uſed to be common to fiſh in the time of king *Hen.* 1. *Cap.* 16.

The chapter which forbiddeth that ſheriffs, conſtables, coroners, nor bailiffs ſhall hold pleas of the crown ſeemeth not needful, for appeals of felony are not here to be brought before coroners, and the exigents and judgments pronounced, and therefore this point had need to have had more words to have expreſſed the meaning of it. *Cap.* 17.

For

For the end of the chapter of the moveable goods of the dead, it appeareth that the action accrueth to the widows, and to the children to demand their reasonable parts of the goods of their father taken away.

That which is forbidden to constables to take is forbidden to all men, in as much as there is no difference betwixt taking from another against his will and liberty, whether it be horses, victuals, merchandizes, carriages, or other manner of goods. *Cap.* 19, 20.

The chapter for holding the lands of felons for a year and a day is out of use; for whereas the king ought not to have the waste by law, or but the year in the name of fine for safeguard of the land from spoil, the king's officers take both.

The defence of the precipe is not holden in that they do it without writs of possession of farms every day, that the lords lose the cognizance of their fees, and the advantage of their courts.

The point, which commands that one measure be throughout the whole realm and one weight, is disused by merchants and burgesses, using for the pound the old weight of twenty shillings of right assize, and also of ells and other measures.

The defence which is made of the writ *De odio & atia*, that the king be not chancellor, nor take any thing for granting the writ ought to extend to all remedial writs, and the same writ ought not extend only

to

to the felonies of murder, but it ought to extend to all felonies, and not only in appeals, but in indictments.

The point which forbiddeth that no bailift put a freeman to his oath without ſuit, is to be underſtood in this manner, That no juſtice, no miniſter of the king, nor other ſteward nor bailiff have power to make a freeman make oath without the king's command, nor receive any plaint without witneſſes preſent who teſtify the plaint to be true.

The point where the king granteth that he will not diſſeiſe, nor impriſon, nor deſtroy, but by lawful judgment, which overthrows the ſtatute of merchants, and other ſtatutes, is to be interpreted thus, that none be arreſted, if not by warrant grounded upon a perſonal action, for if the action be venial, no impriſonment is juſtifiable, if not for default of main-pernors. And ſo it appeareth that none is impriſonable for debt. And if any ſtatute be made repugnant to this point, either for the king's debt, or for the debt of any other, it is not to be kept. That (none be outlawed) is to be meant, if not for mortal felony, from which one is ſaved by the oath of neighbours, *ex officio*, as it is the uſe in Eyres; and therefore that deſtroyeth the ſtatute of outlawry of a man for arrearages of account, and all other the like ſtatutes; and that which is ſaid, that none be exiled nor deſtroyed, is to be interpreted in this

manner, that every one have an action to appeal all persons, all suitors, all assessors who destroy men against the right course, and against the rules of law.

On the other part, where the king forbiddeth that none be disseised of his freehold, of his liberties, or of his free customs, is thus to be understood, That one shall recover by assise of *novel disseisin* every manner of freehold, and all manner of possession real of lands, or of franchises whereout one is cast, if it be not by lawful judgment; and these words, (if it be not by lawful judgment) refer to all the words of this statute.

The point which the king grants to the people, that he will sell no right, or hurt nor delay justice, is misused by the chancellor, who sells the remedial writs, and calls them writs of grace, and by the chancellor of the Exchequer who denieth acquittances of payments made to the king under green wax, and all those who delay right judgment or other right.

The point concerning leave for the staying of merchants, aliens, is so to be understood, that it be not prejudicial to the towns, nor to the merchants of *England*, and that they be sworn to the king if they stay longer than forty days.

The point which forbiddeth that none alien his land in prejudice of the lord of the fee, is to be interpreted in this manner, that no tenant alien the fee of his lord without his

his conſent, or to hold in chief of the lord without increaſe of new ſervice.

The point of the cuſtody of abbies, and of religious places when they fall, is thus to be underſtood, that every lord have the keeping of his fee during the vacation.

The point that none ſhall be taken or impriſoned upon the appeal of any woman, for the death of any other than of her huſband, is to be meant of ſuch a woman which the huſband laſt held for his wife, if in caſe there be many wives alive.

The points concerning ſheriffs turns and views of frank-pledges are diſuſed three ways; the firſt that ſheriffs, bailiffs, and ſtewards take extortion of fines, in that they make the people to fine for what they are not occaſioned which they call for beaupleader. The ſecond, that they amerce the People for preſentments upon perſonal actions. The third is, that they charge the jurors with articles touching treſpaſs done by neighbour to neighbour, or of tenant, or of other lord than to the king.

The point which forbiddeth religious perſons to purchaſe lands, overthroweth the ſtatute afterwards made at *Weſtminſter* of the ſame, for as much as the action of the chief lord is limited in ſo ſhort a time, to haſten the king's action in prejudice of the lords of the fee.

The laſt point is of ſuch virtue and of ſuch meaning, as that the king hath the cognizance of treſpaſſes done in ſuch manner, as that the fee-tenants have their courts, and the cogniſance of treſpaſſes done within their manors, and alſo as well of real actions and Perſonals, as of mixt.

CHAP. V.

SECT. 2.

Articles upon the ſtatute of Merton.

SOME points are reproveable amongſt the ſtatutes made at Merton after the Great Charter made, and namely the point of rediſſeiſins. Since the law doth not attaint any treſpaſſer by enqueſt of office, and becauſe pleas may perhaps avail the tenants, and ſhould be by law allowable, aſſizes lie to the example of novel diſſeiſin; and where it is ſaid, that rediſſeiſors be arreſted and kept in priſon, and afterwards that they be releaſed is but an abuſe of the law, which requireth that every one who is attainted of a perſonal treſpaſs be puniſhed by a corporal puniſhment, if he cannot ranſom it by money; and that which is ſaid of this ſtatute is to be underſtood of all ſtatutes made after the Great Charter, made in the

time of king *Hen.* I. for it is not juſtice that he ſhould be puniſhed for one fault with corporal puniſhment, as impriſonment or other, and further by a pecuniary pain, or by ranſom; for ranſom is nothing but a buying out the corporal puniſhment.

The point of improvements of waſtes is reproveable as being too general, for it ought to diſtinguiſh of commons; for in ſome places the commoners are enfeoffed in ſuch manner that the whole common is only in the tenants, ſo that the lords have nothing but the ſoil, and in ſuch caſe that ſtatute is prejudicial to the commoners, and repugnant to the Great Charter, which willeth that none be caſt out of his freehold, nor the appurtenances without lawful judgment.

The point of rape of marriages is reproveable, in as much that it hath an exception of perſons of laymen, and of clerks, for there is no more law that a clerk ſhould offend without puniſhment than a layman.

Other points are repugnable; if the tenant do damage to his lord, or *e contra*, for they are not puniſhable according to the ſtatute, but they are bound by their homage and fealty betwixt them, as it is before ſaid amongſt the judgments of defaults.

The points of making attornies in ſuits at hundreds, is to be underſtood in this manner; that although a ſuitor by this ſta-

tute may make an attorney for him to ſave his default, yet none can give judgment by attorney; nor is a waman named in this ſtatute, becauſe that no judgment is to be given by a woman.

CHAP. V.

SECT. 3.

Of the ſtatutes of Marlbridge.

SOME points of the ſtatutes of Marlebridge are reproveable, and namely the firſt five points, becauſe that every perſonal treſpaſs is puniſhable by a corporal puniſhment, if the treſpaſs be not bought in by ranſom according to the quantity thereof.

The chapter which commandeth the Great Charter to be kept in all points is defective for want of addition of puniſhment, and it ſeems croſs to make conſtitutions not holden.

The Chapters remedials of lords of fees is reproveable in the mitigation of puniſhment: for all thoſe who do defraud the law, are puniſhable by corporal puniſhment, and not by a ſimple amercement.

The point of proclamation of wards is reproveable, as that which is founded upon error, as it appeareth in the chapter of defaults.

The chapter of rediſſeiſors is reproveable, for that no ſpecial command ought to exceed common right, nor any pain of impriſonment is judgeable but for a wrongful impriſonment.

The chapter of days in dower is reproveable, ſince the law haſteneth right more in the king's court than elſewhere.

The chapters following of attachments and diſtreſſes are reproveable, for in pleas of attachments no eſſoin is allowable for the defendants, nor any ſuch order of diſtreſſes is to be holden according to law.

The chapter which forbiddeth that none make his tenants jurors is reproveable, becauſe that no puniſhment is therein ordained, and becauſe it hath no exception; for there are many caſes where the people ought to be jurors, though they come not by the king's command, as before juſtices of foreſts, before coroners, and before eſcheaters, and as in courts of ſheriffs, and views of frank pledges, and as affeerers, and at gaol deliveries.

The chapter which commandeth the arreſting of thoſe who are bound to account is reproveable, ſince the action is mixt, and requireth ſummons, and not perſonal arreſts.

The chapter of waſters of farms is reproveable, for waſte is a perſonal trepaſs, and requireth a perſonal puniſhment, and not a ſimple amercement.

CHAP. V.

SECT. 4.

Articles upon the ſtatute of Weſtminſter the firſt.

MANY chapters are reproveable of the ſtatute of *Weſtminſter*. For the points touching religious perſons, are matter to gain monies, and a purchaſe upon a foundation of covetouſneſs, more than for their advantage.

The chapter of clerks found guilty of felony, is reproveable, for want of addition of puniſhment, theſe clerks are not to be delivered to ordinaries, but at the pleaſure of the king, and of his juſtices.

The chapter of wreck is reproveable, in as much as the finder is forejudged by the ſtatute to have part thereof, whereas he ought to have part of the profit, and ſo it is reproveable, as to the awarding of the puniſhment.

Of the points of amercements is before ſpoken in the Great Charter.

The point of takings of diſtreſs is much reproveable, as before is ſaid. *Cap.* 9.

The chapter concerning purſuing of felons to maintain the peace is reproveable in the puniſhment, for he is conſenting to a

felon

felon who doth not apprehend him when he may.

In the same manner is it of the chapter of coroners, contained in the articles following.

The point of election of coroners was not needful to have been ordained, for it behoveth more the electors to have wise and loyal coroners than to the king, and it had better have been enacted, that the coroners do present the points of their office under the seals of the jurors, than sheriffs should make counter parts of the rolls.

The point of enquest of *odio & atia* is reproveable, for *London* and other places in liberties where there are no rights. *Cap.* 12.

The point of putting people found guilty of felony, who will not put themselves upon the country, to penance, it is out of use that one kill them, without having regard to the conditions of the persons, and therein it is reproveable, since one may perhaps help and acquit himself otherwise than by his country, and in as much as none is to be put to penance before he is attainted of the offence for which he ought to be pained.

The ordinances of punishment of long imprisonment are to be reprehended, as before is said.

The point of the order of outlawry of the principals before the accessaries is no statute, but a revocation of error.

The point of repleviſals is reproveable, according as it is ſaid of actions; the puniſhment of long impriſonment contain error as is ſaid before.

The puniſhment of heirs males married, as againſt the king, without the conſent of their lords, betwixt 14 years and 21 years is reproveable, for then the king ſhould have amends for that, for which he hath not any perſonal ſuit for the amends.

The point of heirs females containeth error, as appeareth in the reprehenſion of the point of marriages in the Great Charter.

The point of tortious diſtreſſes ought to contain the puniſhment for the robbery.

The puniſhment of miniſters, diſſeiſors, by colour of their office is reproveable, for the ſmallneſs of it, as appeareth amongſt the judgments.

The point which forbiddeth ſheriffs, that they take no rewards is reproveable, in as much as the king taketh of them, and they take nothing of the king.

The point of fines of clerks, and the officers of juſtices in Eyre is reproveable, for the common grievance of the people without taking of profit.

The point of impriſonment are reproveable for the reaſons aforeſaid, and the point of tolls for the puniſhment of impriſonment, and becauſe the tolls are not eſtabliſhed certain.

The point which willeth that thoſe who dif-uſe marriages, ſhould loſe them, was not needful

needful to have been made, for the law is, that he ſhall loſe his franchiſe who uſeth it not.

The point of receivers of the king's monies, and not rendering the ſame is reproveable, for the ſmalneſs of the puniſhment, according to that which appeareth before.

The errors of taking of carriages and other goods, appeareth ſufficiently by the reaſons before.

The point which forbiddeth judgment to be given by ſtrangers in counties is reproveable, for no judgment given by another than an ordinary judge aſſigned is to hold.

The point which maketh mention of robbery or diſſeiſins is reproveable, for all thoſe are to be ſeiſed upon whom the jurors indict of robbery, according to the example of thieves and other felons.

The point of attaint is reproveable, for it ſhould not extend to one caſe, but it ought to comprehend all oaths taken by twelve men, if one of the parties complain thereof.

The point of limitations of actions is reproveable, for the reaſons in the chapter given upon the ſame matter.

The point which forbiddeth falſities and abuſes uſed in courts before this time to falſe judges, who uſed not the law by ſufferance of falſities.

The point of champions is reproveable, for no champion is to be receiveable as a witneſs.

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The point of not allowing eſſoins in aſſiſes after appearance, is reproveable by the aſſiſe of Novel diſſeiſin, where no eſſoin is allowable for the tenants, no more before appearance than after, nor in no other perſonal action.

The other points of eſſoins are reproveable, for no falſe cauſe of eſſoin ought to advantage any man.

The point of delays in pleas of attachment is reproveable in many points, according as appeareth in the chapter of defaults.

The point to plead upon the ſurcharge falleth in prejudice of ſheriffs, and of lords of fees, and of liberties; and although the two points of diſſeiſins, that is to ſay, that every one may avoid the damages in the point of perſonal treſpaſs done to his anceſtors, in as much as his action lieth, of what age ſoever the parties be, yet is the firſt reproveable, for as much as the plaintiffs have no recovery for the damages done to their anceſtors, nor any action, but to have reſtitution of the poſſeſſion.

The other point is reproveable for the ſmallneſs of the puniſhment, but according to common right this puniſhment ſhould have time, that he ſhould never do homage betwixt them for the lord's forfeiture, when he beginneth to diſinherit his tenant contrary to the right of homage,

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The prayer of the king is reproveable, becauſe he ought to aſk nothing contrary to law, but it is the prayer of the juſtices who deſire always to have much to do.

The point that if he who is vouched to warranty ought not to warrant, although he be bounden by the deed of his anceſtor whoſe heir he is, in caſe he alledge that nothing deſcended to him from that anceſtor by whoſe deed he is vouched, is reproveable, for according to the old law, lands remained liable to the debt, of thoſe who acknowledged it, to whoſe hands ſoever the lands afterwards came.

In the ſame manner it uſed to be in all other contracts, where the contracts were adjudged or granted; and although nothing deſcended to the heir, for that he loſt not the tenements for want of acquittance, and if he who bound himſelf to warranty would not warrant the land, nor vouch over, it appeareth thereby that the anceſtor was tenant by a naughty title, and that he was poſſeſſor thereof by an ill way; and if the heir had nothing whereby to diſcharge him, the tenements bound to warranty ſhould be recovered. And if the heir had nothing whereby to diſcharge, nor no land is found bound to the warranty, if the purchaſer loſt his purchaſe, it was at his own peril, and accounted his own folly, the better at any other time to look to his aſſurance.

CHAP.

CHAP. V.

SECT. 5.

Articles upon the ſtatute of Weſtminſter 2.

THAT which is ſaid of the ſtatute of *Weſtminſter* 2. which faileth in many caſes is now to be underſtood, for againſt all treſpaſſes is the law made, although it be diſuſed, or controuled by thoſe who know not the law.

And the three firſt chapters are not ſtatutes, but are the revocations of the errors of negligent judges, for the law permits not that a man make a better eſtate to another than himſelf hath, but requireth that every lawful contract be made according to the wills of the ſpeakers; and that which is in the ſtatute, that if a fine be levied in deceit of right, that the ſame be null is reproveable; but it might have been better ſaid, that for fine, that no man be barred of his right, for the fine levied cannot be rightly ſaid null, but it holds in force, and barreth at the leaſt donor of his action.

The point of diſtreſſes doth not repeal any error, but affirm them, as before appeareth in the ſecond book.

And that which is ſaid in the ſecond ſtatute, that ſuitors in counties have no record,

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is but abuſion, ſince every lawful teſtimony is a record, and every falſe teſtimony is a lye; and as lawful may other people teſtify as the juſtices aſſigned. Is not the ſame writ abuſed, to grant to counties records in outlawries, pledges, mainpriſes, battles, grand aſſiſes, and other caſes, and not other points? and to deny that the ſheriffs or lord of the fee, or other to whom the king ſendeth his writ, hath not as well record of proceſs before him, as thoſe whom they call juſtices, is but error.

And as to the cauſes of writs of pains is ſuffered great error, that that which is not warranted in the acceſſory, that he may

in the principal, ſince the law permits that none be aided by a lye or a vicious writ.

Of the other ſide, becauſe there is more realty in the ſtatute than perſonalty, as more attachments are awarded in perſonal actions than in mixt and reals.

The point of meſnes is reproveable, as to the proclamation, and as to the non-acquittance of thoſe who hold by leſs ſervice than the meſnes, for be it that *B.* hold one hundred pounds lands of *D.* by the ſervice of twenty pounds *per annum*, and the ſame *B.* give the moiety thereof in frankalmoigne, or frank-marriage, or to hold by the ſervice of a roſe, to *C.* if it happen that the ſame *B.* forfeited what he hath, by this ſtatute no remedy is ordained for *C.* who was purchaſer from *B.* and therefore the old courſe

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is to be holden which is ſaid before in judgments.

The remedial ſtatute of the right of the wife loſt by the default of the husband is reproveable, for the old law was, that a woman after the death of her husband ſhould repleve her inheritance or purchaſe ſo loſt, ſummoning the tenants, for a cape is not, but a diſtreſs and ejection of ſeiſin ſaving every right; and it is lawful for one of the tenants in common to defend his right where he is damnified by the negligence or the non-ability of his partner. In the ſame manner may a woman according to law in the right of her husband; neither doth the law give to widows action to demand dower in the caſes named in the ſtatute, but in all caſes the law enables her to be received by lawful reverſing of the judgment.

And that which is contained that tenants may vouch to warranty, is but abuſe; how holdeth voucher place where a writ lieth not, yet it is underſtood with a ſaving, that no juriſdiction of a judge aſſigned extend to other perſons than thoſe who are named in the writ, and that none ſhall vouch more than in the ſame writ are named, by writ of *Replegiare*, and therefore are warranties attainable and determinable by writs.

The ſtatute following, which ordaineth new writs remedials after defaults, is prejudicial to lords of fees, who loſe the

the advantages of their courts, becauſe that writs of right are forbidden in ſuch caſes where they wont to be uſed.

Preſentments to churches ought not to be but in the names of thoſe, to whom the mere right of the advowſon doth belong, according as is ſaid before in contracts; and it is error and abuſion of law to endow women of advowſons, or to leaſe them to farm, or for the term of another's life, or in frank-marriage, or in mortgage, or in fee-tail, or otherwiſe than in fee-ſimple.

And thoſe who receive clerks preſented to churches, in prejudice of thoſe to whom the mere right in fee doth appertain, are bound to make reſtitution of the damages, and thoſe who have recovered to jurors, by whom they were certified of the right of the perſonage; and ſo it appeareth that the puniſhment lieth more againſt the biſhops than the preſentors.

And that which enacteth long impriſonment for a puniſhment, is but abuſe; ſince none is impriſonable if not for a wrongful impriſonment.

The ſtatute of warranties is but a revocation of error uſed againſt law.

The ſtatute of admeaſurement is reproveable in many points, as to the proclamations, ſince admeaſurement and ſurcharge are to be by jurors.

The ſtatute of meſnes is reproveable in many points, as it appeareth in the chapter

of diſtreſſes, contracts, and defaults, and the ſame appeareth in the end of the ſtatute where the plaintiffs know not a ſet fine.

The ſtatute of ſuſpenſion of writs in Eyres is reproveable, as repugnant to the Great Charter, which ſaith, we will ſell no right, nor detain it, and wherefore are writs rebuttable from hearing, but for the multitude of writs which are, and for the ſmall number of juſtices the right of many periſh.

The ſtatute of obligees in account is reproveable in many points, one as the exception to the perſons, for the maſters is ordained recovery, and to ſervants not, when auditors are aſſigned without the conſent of the ſervant.

The other, that the auditors are not tied to allow any thing but at their pleaſure without puniſhment.

Another, that the recovery is ordained by detinue of the ſervants, and not againſt the ſurety, nor the goods.

Another, that the lords are not to be atteſted according as of the ſervants.

Another, that the wickedneſs of auditors remained unpuniſhed.

Another, of outlawry, for none is to be impriſoned if not for a tortious impriſonment.

The ſtatute of appeals is reproveable in two points, one in the ſpecialty of the corporal puniſhment, and of the plurality puniſhments, ſince the redemption by a pecuniary

cuniary pain is but the buying out of the corporal puniſhment.

The other to have juriſdiction againſt the abettors without original writ.

The ſtatutes of waſte are founded upon error, ſince waſte is a perſonal treſpaſs, and requireth other manner of proceſſes, as appeareth in the chapter of defaults; and to defend a perſonal treſpaſs by writ is but a vain labour.

The ſtatute of not allowing a falſe cauſe in the eſſoin *de malo lecti* is defective, for in no eſſoin for no party is any falſe cauſe, or any falſity to be permitted, nor ought to be profitable to any.

The ſtatute of debt and damages recovered is defective, for not only ſhould ſuch remedy be in the king's courts, but it ought to comprehend in all other lay courts.

The ſtatute of thoſe who are dead without wills is defective, for it ought to comprehend felons and fugitives as well as true men; and the king, and all others into whoſe hands their goods come as well as ordinaries, for none can forfeit the right of another.

The ſtatute for allowing one manner of exception in the like actions was not needful to have been made if not for the negligence of juſtices, for every affirmative is encounterable with his negative at the peril of the party.

The ſtatute of detinue of ſervice is a novelty dangerous to lords of fees, as appeareth in the chapter of defaults.

The chapter of making new writs had not need to have been made, if the firſt ordinances of writs were obſerved.

The ſtatute to have remedy by aſſize of *novel diſſeiſin* is reproveable, for as much as it comprehendeth not lands charged with villain cuſtoms, nor lands holden for term of years.

The point needeth not have forbidden falſe exceptions, if the pleaders held themſelves to the points given in charge.

And as to the point of impriſonment, the ſtatute is reproveable, for the reaſons aforeſaid, and alſo as to the pain of double damages, for the law giveth a man no more than is his demand.

And that which appeareth in the ſtatute of falſe appeals is more error than right in the enacting the award of amends to defendants, whereas it is not to the plaintiffs.

And as to the writ to the uſe of ſheriffs in diſſeiſin, it is no ſtatute, but it is a thing at pleaſure, and a wrong.

And that which is uſed to grant damages in part, or in all to juſtices, or to clerks, or to miniſters or others, ſhould be forbidden, as a uſage very full of damage to the people.

And as puniſhments are reproveable in *novel diſſeiſins*, ſo are they in the ſtatutes of diſſeiſins, corporal puniſhments nevertheleſs hold in ſuch perſonal treſpaſſes, but in rediſſeiſins more than in diſſeiſins.

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The ſtatute which forbiddeth that writs of *Oyer* and *Terminer* be not *ligirment* granted, is not founded upon any law, as being repugnant to the words of the Great Charter, We will not ſell or delay juſtice to any man; but cometh rather from the temporal judges, who cauſe the ſame for their advantages, as deſiring to embrace all pleas.

The ſtatute of caption of aſſiſes thrice in the year is reproveable, as to the adjournment of the parties out of the counties before the juſtices of the bench, who have no juriſdiction over thoſe pleas, ſince the commiſſions are given to juſtices aſſigned.

And as to take juries and enqueſts in their counties, ſo the ſtatute is not to deſtroy the authors and endamage the people.

The ſtatute which forbiddeth juſtices that they cauſe not jurors ſay, but their advice is defective, as appeareth in the chapter of jurors.

The ſtatute of exceptions allowables rebutted by juſtices is not founded upon law, as appeareth in the judgment of falſe juſtices, but is when it is in no part fixt.

The ſtatute of rape is reproveable, for none can ordain by ſtatute that a venial puniſhment be turned into a mortal without the conſent of the pope or the emperor.

The ſtatute that the king hath the ſuit in rape, or in elopement of women married, is reproveable, for none is bounden to

anſwer to the king's ſuit if not by appeal, or by indictment.

And that which is contained in it, that women ſhould loſe their dower for the ſin of adultery, ought alſo to comprehend all adulterers, who claim to hold the inheritances of their wives by the curteſy of *England*, ſo that there be no exception of perſons.

The impriſonment of elopers of nuns and their ranſom is no law, but is an error in a double manner, as before is ſaid in many places.

The impriſonment for two years or more, ordained for a corporal puniſhment to raviſhers of marriages is but error; for no corporal puniſhment ought to be ordained but for common profit, as before appeareth of open penances.

And that which is ordained of proclamations in perſonal actions is but abuſe of law, as it is ſaid in the ſtatute of moignes.

The ſtatute which awardeth ranſom is reproveable, for ranſom is nothing elſe than the redemption of corporal puniſhment.

The ſtatute of diſtreſſes made by bailiffs unknown is diſtinguiſhable, for in tortious diſtreſſes without warrant the judgment of robbery holdeth; and by warrant is every one receivable, whether known or unknown.

The

The ſtatute of jurors is reproveable, for the law wills that the plaintiffs have the aid of the courts to cauſe the witneſſes to appear, whereby they may the more lawfully help themſelves, without diſtinction of perſons.

And that, that juriſdiction is granted to juſtices aſſigned to *Oyer* and *Terminer* plaints, without a ſpecial commiſſion, is but abuſe.

The ſtatute which awardeth that writ of judgment be made without warrant of original writ, is nothing elſe than a licence to falſify the king's ſeal.

The puniſhment of ſheriffs ill anſwering is reproveable, as to the puniſhment; for diſinheritors of the king offend of the crime of majeſty, and are by conſequence puniſhable by death, which ought not to be in ſuch caſes.

And as to iſſues the ſtatute is reproveable, for no iſſues are awardable but after defaults in actions mixt, and not to the king's uſe, but for the profits of the plaintiffs.

The defaults made of the ſtatutes of clerks, cryers, and other officers of the court are but idle, becauſe they are not kept at all.

The ſtatute that cognizances and inrolments which are made in the Chancery, the Exchequer, and before juſtices be eſtabliſhed, is an authority of great ill; for by falſe inrolments might every one in authority deſtroy thoſe he pleaſed, which ſhould be a great inconveniency. Again, by this ſta-

tute authority ſhould accrue to authority to the chancellor and others, to falſify the king's ſeal by writs, to give judgment without original writs.

And therefore note, that none but the king can receive attornies in the king's court, nor recognitions betwixt parties without warrants of original writs.

The ſtatute of improvements of waſtes and commons of paſture is reproveable, and diſtinguiſhable according as hath been ſaid before.

The ſtatute to have view of lands is but a wrongful delay of the right of the plaintiffs; for the view appeareth ſufficient by the certificate of the ſummons, upon what tenements the tenants are ſummoned.

The ſtatute which forbiddeth that no officer of the court take any preſentment of any church, nor other thing which is depending in plea, or in debate, is not kept.

Reprehenſions upon the ſtatute of Glouceſter, 16 *Ed.* 1.

THE ſtatutes to recover damages in pleas of poſſeſſion enacted at *Glouceſter* or elſewhere, and of the horrible damages in waſte, are reproveable, for that the law giveth one no more than is his demand, and therefore

therefore it behoveth that the damages be mentioned in the writs, if damages ſhall be awarded; for a judge cannot exceed the points of his commiſſion, and ſo it would be needful to uſe it according to the firſt ordinance of writs.

And the ſtatute of tenements aliened of lands in prejudice of others is reproveable, for the remedy ought to be ſuch as of guardians alieners, to the deſinherifon of the right heirs.

The ſtatute of treſpaſs pleaded in counties is reproveable for want of diſtinction, for ſmall treſpaſſes, debts, covenants broken, and ſuch other kinds not exceeding forty ſhillings. Suitors have power to hear and determine without writs, by warrant of juriſdiction ordinary, and by writs granted afterwards; for ſheriffs have more juriſdiction in their writs vicontiel than juſtices of the bench by the Pone.

And as to the recovery of twenty ſhillings or more, in right of eſſoin of the king's ſervice not warranted, the ſtatute is reproverble, for that eſſoin might be caſt where the defendant would make default by the adverſe party, and ſo he ſhould have advantage of his malice.

The ſtatute which forbiddeth the abatement of appeals is not obſerved.

The ſtatute which awardeth an innocent man to remain in priſon, or to have no manner of puniſhment for neceſſary manſlaughter,

ſlaughter, or by miſchance, where no offence is found, is but an abuſion.

The ſtatutes making mention of *London* ought to extend commonly throughout the whole realm.

CHAP. V.

SECT. 6.

The reprehenſions of Circumſpecte agatis, *Ann.* 13 *Ed.* 1.

THE firſt point which ſaith, that the king's prohibition holds not in correction of mortal offences, where a pecuniary pain is enjoinable by ordinaries, is founded upon open error, and uſage to enjoin a pecuniary pain for a mortal offence, notwithſtanding to deſtroy the king's juriſdiction,

The other points to compel the pariſhioners by corrections to encloſe church-yards, to offer, to give mortuaries, monies for confeſſions, chalices, lights, holy veſtments, and other adornment of churches are more grounded upon intereſt than amendment of ſouls; and note, that after that they are offered to God, that they are ſo ſpiritual that they are to be expended but in alms, and ſpiritually, for they are never to be converted to lay uſes.

And then if any pariſhioner, for the hurt of the parſon of the church, keepeth back his tithes, or ſtealeth them away, or doth not pay them duly or fully, the ſame is not puniſhable by a pecuniary pain, but by a corporal puniſhment.

For the excommunicate no pecunial pain was to be for reſtitution or ſatisfaction, no more than of a Pagan or a jew, and if they do demand a pecuniary pain, there the king's prohibition lieth, and much more in the demand of penſions, or of damages of treſpaſs, or of defamation; but of pleas of correction where one pleads only *pro ſalute animæ*, the king's prohibition lieth not.

CHAP. V.

SECT. 7.

THE new ſtatute of debts is contrary to law, as it appeareth in the chapter of contracts; for every impriſonment of the body of a man is an offence if not for tortious judgment, and the law will not ſuffer any oligation, or vicious contract by intermixture of offence, and therefore it was to be avoided as grounded upon an offence; for no honeſt man ought to agree to ſuch a contract which cauſeth him to offend, or to be puniſhed.

Again

Again, it is contrary to the Great Charter which enacteth, that no man be taken, nor impriſoned if not by the lawful judgment of his peers, or by the law of the land.

Here endeth the *Mirour of Juſtices*, of the right laws of perſons according to the ancient uſages of *England*.

The end of the fifth chapter, and of the whole book.

F I N I S.

THE DIVERSITY OF COURTS AND THEIR JURISDICTIONS.

Compiled Ann. 21 *Henry* VIII. in *French*, tranſlated into *Engliſh* Ann. 1646.

By W. H. *i. e.* WILLIAM HUGHES, of *Gray's Inn*, Eſq;

The *Second Edition*, corrected and paged as the former.

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JUKISDICTIONS.

OF

THE

THE

Diverſity of Courts, &c.

IT is to be underſtood, that the king is the fountain of juſtice, and to that purpoſe ordaineth judges, that juſtice be adminiſtred to all his ſubjects.

The king himſelf, for the excellency of his perſon, may ſit and give judgment in all cauſes perſonal or real, betwixt party and party, but he cannot ſit in perſon in judgment in any cauſe where he himſelf is party, or where the things of his crown or dignity are concerned; as upon an indictment of treaſon, or upon an appeal of murder or felony, or upon an action brought by himſelf as formedon of land, of which the right is deſcended to him from a collateral anceſtor, or in an action of debt, by reaſon of the affection moving him to be favourable to himſelf; and therefore he maketh his judges to ſit and hear ſuch matters in difference, and to do juſtice to the parties.

And the place where the judges ſit to miniſter juſtice are called courts, which are of divers kinds, and the judges thereof have ſeveral authority.

Of the court of Marſhalſea.

AND firſt, the court of Marſhalſea is an ancient court, and made for the well government and ordering of the king's houſe, for the preſervation of the king and his ſervants; and this court hath its bounds within which it hath juriſdiction, and not without.

The judges of this court are the ſteward and marſhal of the king's houſe, for in them under the king is the ordering of the houſhold, *&c.*

The title of the court is, *Placita coronæ, Aula hoſpitii domini Regis tent' coram ſeneſchallo & mareſchallo hoſpitii domini Regis, &c.*

And this court hath power to enquire of treaſon, murder, felony, and to take appeals of them, and of mayhem if they be done within the verge, betwixt perſons who are of the king's houſe.

And if one of the houſhold ſueth another who is not of the houſhold, he may plead to the juriſdiction of the court; and if they will not allow of the plea, he ſhall have a writ of error, and the judgment ſhall be reverſed in the King's Bench.

And if one of the houſhold ſued ano-

ther

ther of the houſhold, and the plaintiff be put from his ſervice depending the ſuit, the other ſhall ſhew the ſame and abate the writ; but quære if it be ſo, if in caſe the defendant be removed out of ſervice, &c.

The coroner of the Marſhalſea ſhall ſit with the coroner of the country upon the death of a man, and if the plea may be determined before the king remove out of the verge it ſhall be, otherwiſe it ſhall be at the common law.

The King's Bench.

THERE is another court of high authority called the King's Bench, and the judges of that court have authority to enquire of, hear, and determine pleas and things touching the crown; as high treaſon, murder, man-ſlaughter, robberies, felonies at the common law; and by ſtatute law, mayhems, treſpaſſes, burglaries, and all deceits and falſities whatſoever; but they have not authority to hold pleas betwixt party and party by original writ, but in ſpecial caſes.

They have power to proceed in and determine indictments, and preſentments taken within any county within the realm where the king's writ runneth, if it be certified by *certiorari*, or be delivered under the hands of the juſtices of the peace, or other juſtices be-

fore whom the indictments or presentments be; whether it be of treason, felony, forcible entry, riot, or any other thing against the peace; and they have authority to reverse judgments given in the Common Pleas, by a writ of error, or before justices of assise, and in liberties and franchises, but not in *London*; for a writ of error of a judgment given before the sheriffs of *London* shall be reversed before the mayor in the Hustings.

And erroneous judgments given before the mayor in *London* shall be reversed at St. *Martin's* before special commissioners assigned to that purpose; and thereupon a writ of error shall be directed to the mayor to have the record and proceedings thereof, and the record shall be certified by the recorder, *&c.*

And it is said, that if an erroneous judgment be given in *Ireland*, it shall be reversed in the King's Bench by a writ of error, for that in *Ireland* the laws of *England* are used.

And if an erroneous judgment be given in the cinque ports, it shall be reversed in the King's Bench, and the writ shall be directed to the warden of the cinque ports, and he shall return the writ and the record, *&c.*

The king may have a formedon in the King's Bench, debt, detinue, and every other action, and a *quare impedit* at his pleasure. And a common person may bring an action of trespass *quare vi et armis* in the King's Bench, and actions for forging of false deeds,

main-

maintenance, conſpiracy, actions of deceit, upon the caſe, or ſuppoſing any falſity and deceit, where the king ſhall have a fine, *&c.*

And note that there are ſome actions upon the caſe, which ſhall be ſued in the King's Bench, and ſome not; as an action upon the caſe againſt one ſuppoſing that the defendant hath ſold land to the plaintiff for a certain ſum of money, and that he covenanted to enfeoff him by ſuch a day, and not by any deed, &c. or to build a houſe ſuch a day, and did not do it, &c. ſuch actions ſhall be brought in the ſame court; but there are other actions upon the caſe, which ſhall not be brought in the King's Bench; as if a Horſe be ſtolen out of the common inn, an action upon the caſe lieth againſt the hoſtler, but not in the King's Bench, as it is ſaid. And ſo it is where a man is ſo bounden to keep his fire, that the ſame hurt not his neighbours houſes, &c.

And note, that the chief juſtice of the King's Bench is made by writ, and not by patent, and it is to this effect; *Rex dilecto et fidel. ſuo I.* Fitz-James Sal'tem. *Quia volumus quod vos ſitis capital. juſticiar. noſter ad placita coram nobis tenenda vobis mandamus quod officio illi intendatis*; but he ſhall be ſworn by the chancellor of *England* before he take upon him his office.

The other juſtices of the ſame court are made by patent, *viz.* by theſe words; *Con-*

ſtituimus, &c. unum juſticiar' noſtr. ad placita coram nobis tenenda, habend. et occupand. officium illud quam diu nobis placuerit.

And if a king maketh a judge to hold and enjoy the ſaid office by himſelf, or his ſufficient deputy for life, the grant is void as to the deputy, and if the grant be to him and his aſſignees, he cannot make an aſſignee, &c.

The Common Pleas.

AND note, there is another court called the Common Pleas, which court hath juriſdiction to hold Common Pleas, as well perſonal pleas as real, or any other *præcipe quod reddant*, of lands or tenements, &c. of debt, detinue, account, and other perſonal actions; and they have power to hold plea of any of thoſe actions, which may be brought in the King's Bench, as actions of maintenance, conſpiracy, forgery of falſe deeds, and actions upon the caſe, and treſpaſs againſt the peace, of ſuch actions wherein the king ought to have a fine, and alſo of attaints; but they have not power to hold pleas of appeals of murder, rape, felony, mayhem, nor to enquire of them nor of riots.

And it is ſaid, that one may ſue the peace againſt another, before the juſtices of the Common Pleas, and if the Party be in the hall, or in the Place, or within their view, they

they may ſend the warden of the Fleet to bring the Party before the juſtices to find ſureties, or elſe commit him to the Fleet; and the reaſon why they may ſo do is, that good order, and the peace be kept about the court; but the juſtices have not power to award proceſs to the ſheriff to arreſt the party to appear in the court where the Common Plea is; but it is otherwiſe of the King's Bench, as it is ſaid, &c.

And it is ſaid, that the juſtices of the Common Pleas have juriſdiction in ſome things which touch the crown, and to enquire and hold plea of ſome felony, and alſo of miſpriſion, and of deceit done within the court, and within the record thereof.

And if one imbezil a panel after the enqueſt paſſed, and judgment given in the Common Pleas, by which the judgment is reverſable by error for want of that panel; the juſtices of the Common Pleas have power to enquire of the imbezilment of the panel by twelve of the officers and attornies of the ſame court, and they ſhall be ſworn before the juſtices to enquire of that default; and if they indict the imbezilers they ſhall be arraigned thereupon, and ſhall be compelled to anſwer thereunto as other felons, &c. and if they be attainted they ſhall forfeit their goods and chattels, *tamen quære, &c.*

And if one be condemned in debt, or treſpaſs in the Common Pleas, and he be in the hall, the juſtices at the prayer of the plain-

tiff may ſend the warden of the Fleet to bring him before them to ſatisfy the party the money, or otherwiſe commit him to the Fleet.

And when he appeareth, and will deny that he is the ſame perſon, then *quære* what ſhall be done, if the juſtices may commit him to the Fleet or not? And ſome ſay not, for that they know him not as judges, but as other men by information of the parties, and the plaintiff cannot maintain that he is the ſame perſon, becauſe he cometh not in but by information of the party plaintiff, and not by proceſs of law; *quære* what is to be done in that caſe?

And ſee another difference betwixt the judges of the one Bench and of the other; for it is ſaid, that if the judges of the King's Bench do award proceſs in a formedon, a writ of right, or execution of land recovered in value, the ſheriff ought to execute the writs although they have not any juriſdiction therein. But if the judges of the Common Pleas will grant proceſs of treaſon, &c. out of their place, the ſheriff ought not to execute the proceſs, for that authority is only of Common Pleas, &c.

The chief juſtice of the Common Pleas is made by patent, *viz.* by theſe words, *Conſtituimus ipſum capital. juſticiar. noſtrum de co'i banco, &c. habendum illud cum feodis, vadiis & regardiis, eidem officio debit' et conſuet'.* And the other judges of the ſame bench are made by letters patent, &c.

The

The Chancery.

AND note, that the court of Chancery is a court of a high nature, out of which court iſſue all original writs, and there a man ſhall traverſe offices and ſuch things; and in that court women who are widows, to the king ſhall be ſworn that they ſhall not marry without the king's licence, before the time that they be endowed; and it is ſaid, that of error there upon a patent, or a traverſe, the ſame cannot be reverſed elſewhere but in parliament. *Quære, &c.* And in that court a man ſhall have remedy for that which he can have no remedy at the common law; and it is called by the common people, *The Court of Conſcience.*

And therefore ſee of mattters in conſcience, how the party ſhall have remedy.

If a man hath feoffs to his uſe, and maketh his will, and thereby willeth that his feoffs ſhould make an eſtate to *I.* for term of his life, the remainder to *C.* in fee; if the ſaid *I.* will not take the eſtate what remedy is for him in the remainder, in conſcience, and how he ſhall help himſelf in Chancery, &c.

A man ſhall have remedy in Chancery for covenants made without writings, if the party have ſufficient witneſſes to prove the covenants, and yet he is without remedy at the common law, &c. And for evidences, when a man knows not the certainty of them

nor in what they are contained; it is uſually to be relieved in Chancery, for he is without remedy by the common law, &c.

If a man infeoffeth another of certain lands to his uſe, and the feoffee ſelleth the land to another, if he giveth notice to the vendee at the time of the ſale of the intent of the firſt feoffment, he is bounden to perform the will of the firſt feoffor, as it ſeemeth in the Chancery.

A man was bounden unto another by obligation in a certain ſum of money, and the obligee brought an action upon the ſame deed in another county than where the obligation was made, and had judgment to recover; and the obligor in Chancery ſued to be relieved, and it was ſurmiſed that by that foreign ſuit he was ouſted of divers pleas which he might have had, if the action had been brought in the county where the obligation was made, and it was conceived a good matter to relieve him in equity.

In the court of Chancery a man ſhall not be prejudiced by miſpleading, or for want of form, but according to the truth of the cauſe, judgment ought to be given according to equity, and not *ex rigore juris*. And note that there are two juriſdictions, ordinary, and abſolute; ordinary is as poſitive law, and abſolute is *omnibus modis quibus veritas ſciri poterit*.

If a man be bounden by obligation unto two men unto the uſe of one of them, and one

one of them, *viz.* is he to whoſe uſe it is not, releaſeth to the obligor all actions, ſo as the obligation is diſcharged, he to whoſe uſe the obligation was made hath good remedy in Chancery by ſuppœna againſt his companion who releaſed him, but againſt the obligor it ſeemeth he hath no remedy, for every man is bounden to help himſelf, and it is lawful for a man to get a diſcharge of that which he is charged withall, and in danger to others.

And if a man hath recovered againſt another debt or damages, and he hath paid the ſame without any acquittance, or without having a releaſe, and notwithſtanding the party taketh execution againſt him upon the ſame judgment, he ſhall have no remedy by the common law; and it was then ſaid by the Chancellor that he ſhall not have any remedy in equity in this caſe; and if the ſame ſhould be remedied in equity, then every record ſhould be examined before him, and thereby the common law overthrown.

And if I do enfeoff one upon truſt, and the feoffee doth infeoff another of the ſame land upon truſt, *quære* if I ſhall have a ſubpœna againſt the ſecond feoffee, but where he is infeoffed *bona fide*, there the firſt feoffor is without remedy againſt the ſecond feoffee, as it ſeemeth.

It is ſaid, that the Chancellor of *England*, whereſoever he ſhall be in *England*, hath power to command a man to priſon, and he ſhall not be bailed; *quære* whether the juſtices

ſtices of the one bench, or of the other, out of their Courts have the ſame authority or not.

The Exchequer.

THE court which is commonly called the Exchequer, is properly for accomptants, ſheriffs, eſcheators and the like, and there they are compellable to make their accounts according to the uſages and cuſtoms of the ſame court, &c. and it ſeemeth to be a court which is much for the king's profit, for there all remedies are provided, how the debts and duties to the king ſhall be levied.

And in that court the barons are judges betwixt the king and his ſubjects, and they are ſworn thereunto; and fines, iſſues and amercements which are aſſeſſed in other of of the king's courts, the eſtreats ſhall be made thereof to the court of Exchequer, and there they ſhall write forth proceſs againſt the parties to anſwer thereunto, and to ſatisfy the king what is due to him, and of divers other matters they have power and authority by reaſon of their office, &c.

The Cinque Ports.

THERE are alſo divers other courts, and inferior places where juſtice is miniſtred,

ſtred, and in thoſe places they have judges, as in the Cinque Ports, and ſuch places which have conuſance of pleas, and alſo in Court Barons, in which courts is juſtice done according to law, &c. And although they of the Cinque Ports ought to be impleaded of their lands within the juriſdiction of the Cinque Ports, yet that holdeth only where the tenant ſheweth the ſame, and taketh advantage thereof if he be impleaded in the king's courts, of things which are within that juriſdiction; but if the tenant be ſued in the Common Pleas, for lands within the Cinque Ports, if the demandant doth recover by default, or if the tenant appear, and plead any matter which is found againſt him, ſo that the demandant hath judgment for to recover the land, that judgment ſhall bind him for ever, &c. But the tenant might have alledged, that the land was within the Cinque Ports, and by ſuch plea the king's courts ſhould be ouſted of the juriſdiction, &c.

And ſo it is of lands within an ancient demeſne, if a writ be brought thereof in the Common Pleas, if the tenant appeareth and pleadeth, and doth not take exception to the juriſdiction, and the plea be found againſt him, ſo that the demandant recovereth, the tenant ſhall not reverſe the judgment by a writ of error, becauſe the tenant might have taken exception to the juriſdiction of the court, and it ſhould have been allowed, &c. But yet the lord may reverſe that judgment by

by a writ of deceit, and ſhall make the land ancient demeſne as it was before, &c.

And if one hath conuſance of pleas in a town or in a manor, and a writ is brought in the Common Pleas of the ſame land, and the tenant pleadeth, and judgment is given againſt him, the recovery is good, for it is within the power of the king, and the writ of the Common Pleas doth take place there; and if the bailiff, or lord doth not demand conuſance, the judgment is good. But in another action, the bailiff ſhall have conuſance for that the nature of the land is not charged, and ſo ſee that where a man hath conuſance of plea, &c. it ought to be demanded by the bailiff, or the lord, and the tenant ſhall not demand the ſame, if he be impleaded in the king's court; but of the ancient demeſne there it behoveth the tenant to ſhew the ſame, and plead to the juriſdiction, &c. if he will have advantage thereof, &c.

And ſo note, that in the Cinque Ports there is ſuch a liberty that the lands and tenements are pleadable there before the barons, &c. and yet if one be impleaded at the Common Law of lands within the Cinque Ports, the barons ſhall not have conuſance of the plea, but the tenant may plead the ſame to the juriſdiction in abatement of the writ, &c.

The

The Court Baron.

NOTE alſo that there is another court which is called Court Baron, in which court the ſuitors are the judges, and not the ſteward; and they hold plea of contracts within the juriſdiction, &c. and yet it is ſaid by ſome, that the defendant ſhall not ſhew that the contract was made out of the juriſdiction, and pray that the plaintiff be examined as in a court of Pipowder.

The judges of the Court Baron have authority to hold plea before them of debt upon contracts, or detinue, but not of detinue of charters, nor actions of debt upon a judgment in a court of record; but otherwiſe I think it is of a recovery in the ſame court; nor ſhall they hold plea of maintenance, forgery of falſe deeds, of deceit, nor of *decies tantum*, nor of pleas of accounts, for they have not authority to aſſign auditors. They ſhall not hold plea of debt above the ſum of forty ſhillings, unleſs it be by preſcription; and they ſhall not hold plea of freehold by plaint, but by a writ of right they may. But if a judgment be given of freehold upon a plaint, it is ſaid it is good until it be reverſed by a writ of falſe judgment, *tamen quære, &c.*

And note for what ſuit a man ſhall be judged in a Court Baron, and it is ſaid, that it is where a man is ſeiſed of lands in fee-ſimple, and which he holdeth by ſervice of

ſuit

ſuit at the lord's manor, that ſuit is properly ſuit-ſervice, and for ſuch ſuit he ſhall be judged in a Court Baron, and for no other ſuit as it is ſaid, &c.

And *quære* alſo, when erroneous judgments are given, how they ſhall be reverſed, *viz.* when by writ of falſe judgment, and when by a writ of error. And ſome ſay, that in all courts where the party might remove the plea by a *recordare* upon a judgment given, in ſuch courts a writ of falſe judgment lieth; as in ancient Demeſne, Court Baron, County Court, and Hundred; but in other courts which are of record, the plea ſhall be removed by a *certiorari*, and upon judgment given in ſuch courts which are of record, it ſhall be reverſed by writ of error, &c.

And if a man recovereth in a court of record by erroneous judgment, and ſueth not execution, ſome ſay, that a writ of error lieth, and the party ſhall have a *ſuperſedeas* if he will pray the ſame; but if a man hath judgment in a Court Baron, and taketh not forth execution, no writ of falſe judgment lieth; *quære* the reaſon thereof, and what the law is in that caſe.

And note, that ſometimes the ſheriff is judge, as in re-diſſeiſin, waſte, and admeaſurement, and the proceſs ſhall be ſerved by the baily, as is ſaid.

And note, that the ſheriff is an officer to the king's court, to execute the proceſs thereof; yet ſometimes the coroner is the officer to the court where defect is found in

the

the ſheriff, &c. ſo that he cannot by law indifferently execute the proceſs as for divers apparent cauſes, yet if the ſheriff dieth, the proceſs ſhall not go to the coroner, but ſhall ſtay till another ſheriff is choſen, &c. And becauſe the ſheriff is an officer appointed by the law to attend the king's courts, a man ſhall not take an averment againſt the return of the ſheriff directly, and the reaſon is, becauſe where juſtice ought to be miniſtred and executed, thoſe who have the government of the law ought to repoſe truſt and confidence in ſome perſon; and if every one might aver againſt that which the ſheriff doth, then juſtice ſhould not be executed, but ſhould for ever be delayed, &c.

The means and the remedy how a man may come to his due, and to that which is wrongfully kept from him, and that is by plea, and this word is general, and hath divers effects implied therein, and may be divided into divers branches, *viz.* into pleas of the crown, as appeals of death, robbery, rape, felony, and divers other things, &c. and into actions real, whereby lands, tenements, rents, and other hereditaments are demanded, as writs of right, formedon, &c. or actions poſſeſſory, as writs of entry, aſſiſe of mortd'anceſtor, coſinage and the like, &c. And it may alſo be divided into actions perſonals, as debt, treſpaſs, detinue, &c. and into actions mixt, as into aſſizes, and actions of waſte, which are

are as well in the realty as in the perſonalty. A perſonal plea may be divided into two parts, one into a mere perſonal plea, as an action of debt, detinue, where none hath intereſt but the parties themſelves, the plaintiff and the defendant. And the other part is mixt in the crown; the plaintiff and the defendant have not the ſole intereſt in thoſe actions, but the king hath an intereſt in them alſo to have a fine; as in an action of treſpaſs, *vi & armis*, and that is an action mixt with the pleas of the crown, &c.

And note, that in matters of the crown, for ſuch for which a man ſhall ſuffer death, ſome may be principals, and ſome acceſſaries, as murder, felony, rape, and the like; but in high treaſon I conceive all are principals, and in petit treaſon there may be principal and acceſſary as well as in felony.

In a præmunire all are principals, and in cutting out of tongues, and putting out of eyes, there may be an acceſſary as well as a principal, as is ſaid, &c.

In robbery all are principals who are preſent at the time of the robbery done, otherwiſe it is in murder; for if one be preſent and doth nothing, he is an acceſſary, and not a principal, &c. In mayhem ſome ſay, that all are principals, as well he who is comforting and abetting, as he who giveth the mayhem; as it is in treſpaſs, *tamen quare*, for I conceive the law to be contrary, &c. And it was ſaid, that if a man be preſent at the death of a man,

and

and moveth another to kill the man, that he is a principal, notwithſtanding that he giveth him not any ſtroke, and notwithſtanding that the count in every appeal is, that every principal did mortally ſtrike and wound him, *&c.* but thoſe are words of form, and the blow of him that ſtruck is the ſtroke of him who commanded him when he was preſent.

And it is to know that for ſuch things for which a man deſerveth death, there are two ways to bring him to anſwer the ſame; one by appeal, which is at the ſuit of the party, the other is by way of Indictment, which is at the king's ſuit, &c. And for a mayhem the party ſhall have an appeal of mayhem, wherein he ſhall recover damages, and no death ſhall follow, &c. and ſee the appeal following, and firſt of the appeal of the death of a man, &c.

An appeal of murder.

I H. *hic inſtanter appellat* W. F. *de morte* H. C. *fratris ſui, pro eo quod cum prediƈt.* H. *fuit in pace dei & dom. regis apud* D. *tali die, hora, & anno, ibi venit* W. F. *uti felo dom. regis, in aſſultu premeditat' vi et armis, &c. Et in ipſum* H. *adtunc & ibid. felonice inſultum fecit, & cum quodam gladio precii* 12 *d. quem ipſe in manu ſua dextra adtunc & ibidem tenuit prediƈt.* H. *ſuper caput ſuum percuſſit & unam plagam mortalem in longitudine duorum pollicum in anteriori parte capitis ſui uſque ad*

cerebrum eidem H. *adtunc & ibid. felonice dedit, de qua quidem plaga pred.* H. *per* 3 *dies hunc proxime ſequentes languebat & tunc ibid. obiit*; or *immediate obiit. Et ſic idem Iohannes ut felo dom. regis pred* H. *felonice interfecit & murdravit contra pacem dicti dom. regis, coronam & dignitatem ſuas, & quod hoc fecit nequiter & ut felo contra pacem dei & dom. regis, pred. Iohannes offert hoc diſrationare prout curia dom. regis hic conſideraverit, &c.*

And it ſeems the appeal of murder ought to be brought within the year and a day after the death of him who is murdered; and in an appeal the party hath two iſſues, to put himſelf upon the jury to try if he be guilty or not, or to wage battle, and to make the battle with the appellant; and if he do gage battle he ought to deſign the battle in his proper perſon, and by no champion. But it is otherwiſe in a writ of right, &c.

And there are divers cauſes to ouſt the defendant in the appeal of battle, for it is ſaid, that if an infant within age bringeth an appeal, and the defendant ſheweth that he is within age, &c. the juſtices have been of opinion that he ſhall be put to anſwer the appeal of the appellant being within age, and the defendant hath loſt the advantage to wage the battle, becauſe it was his own act. And I conceive that if a woman bringeth an appeal of the death of her husband againſt another, the defendant ſhall loſe the advantage of battle; for he cannot combat or de-

rain

rain battle with a woman, &c. And if a party be indicted of the felony or murder, &c. he ſhall not wage battle.

And ſee that in an appeal of the death of a man againſt two, the one as principal, and the other as acceſſary, and they waged battle, and the plaintiff demurred upon the plea, and it was ſaid, that the acceſſary ſhould not be put to anſwer till the principal was attainted or acquitted; yet it is ſaid, that the acceſſary ſhould anſwer preſently, but the iſſue ſhould not be tried till the principal were attainted or acquitted; and if the principal be acquitted the other iſſue ſhould not be tried,

And I conceive that in every caſe of felony where a man is indicted as principal, and afterward hath his pardon, or forjureth the realm, that in thoſe caſes and the like the acceſſary ſhall not be arraigned, becauſe that when the principal's life is pardoned, in what manner ſoever it be, the felony is determined, and by conſequence acquitted, and by the ſame reaſon the acceſſary is diſcharged. But *quære* what the law is if the principal have his clergy.

And ſee that where there are three brothers, and the middlemoſt killeth his eldeſt brother, the youngeſt brother ſhall have the appeal, and yet he is not his heir. The ſame law where the eldeſt brother killeth his father, the youngeſt ſhall have the appeal if there be but two brothers. And where the

Wife killeth her husband, the heir ſhall have the appeal, as it is ſaid. *Quære* what the law is in the caſes before, &c.

And the proceſs in an appeal of death is one *capias*, and one exigent, &c. but in an appeal of robbery, an appeal of rape and mayhem, the proceſs is two *capias*, and one exigent, &c. And note that a man can never have an appeal of robbery, rape, or mayhem by deſcent, for the ſame ſhall never deſcend; but it is otherwiſe of murder.

And alſo note, that the appeal ſhall not abate, if in the declaration be the year, day, and other time when the felony was done, and it ſhall not abate for want of freſh ſuit, if it be not within the year and the day, and that is by the ſtatute of *Glouceſter*, *&c.*

In an appeal, if the defendant plead that the plaintiff is a baſtard, and he is certified to be *mulier*, yet the defendant ſhall be received to plead Not guilty, becauſe at the beginning when he alledged baſtardy, he might have pleaded over to the felony, becauſe he demanded another trial, for the one is triable by the record, and the other by enqueſt. But of ſuch matter which is triable by enqueſt, if he pleadeth to the felony, all the ſame ſhall be tried by one trial, and by one enqueſt. In an aſſize, if the tenant alledge baſtardy in the plaintiff, and the biſhop doth certify mulierty, yet the aſſize ſhall be taken to enquire of the ſeiſin and diſſeiſin; *quære.*

And

And *quære* if a man in an appeal plead a plea which is triable in another county, if he ſhall plead over to the felony, becauſe he demandeth two trials.

Appeal of robbery.

THE writ of appeal of robbery beginneth thus:

A. B. *nuper de London generoſus, attachiatus fuit ad reſpondendum*, R. F. *generoſo ſimul cum* D. *nuper de* F. *in ſuburbiis London, de robberia & pace domini regis nunc fracta, unde eos appellat, & ſunt plegii de proſequend.* A. B. *et* C. *et unde idem* R. *in propria perſona ſua inſtanter appellat pred.* C. A *de eo quod ubi idem* R. *fuit in pace dei et domini regis nunc apud London, viz. in parochia ſancti Dunſtani in Fleet-ſtreet in ſuburbiis Londini*, or, *apud talem villam in tali comitatu*, 20 *Octobris anno regni regis nunc* 17. *circa horam ſeptimam poſt meridiem ejuſdem diei venerunt tam pred.* W. I. *et* K. *qui modo non comparent, quam pred.* A. *qui modo comparet, felonice ut felones dom. regis nunc inſidiando et inſult' premeditat' contra pacem regis nunc coronam et dignitatem ſuas die, anno, hora parochia, et warda pred.* or *villa et com. predict. Et pred.* W. *unam galeam precii* 26 s. 8 d. *et unam crateram argenteam et deauratam precii* 40 s. *de bonis et catallis pred* R. *adtunc et ibid.*

invent. felonicè furatus eſt, cepit et aſportavit. Et pred. C. A. *et* I. K. *die, anno, parochia et warda pred.* or *villa et comitatu pred. felonice confortaverunt, ſuſtentaverunt et auxiliaverunt pred.* W. *ad feloniam pred. in forma pred. faciend' et perpetrand' ac eum tunc et ibidem ad feloniam illam factam, ſcientes eum feloniam illam ſic feciſſe, receptaverunt. Et quam cito idem felones felonias predictas in forma predicta feciſſent, fugierunt, predictus* R. *eos recenter inſecutus fuit de warda in wardam* (if the appeal be brought in London), or *de villa in villam*, (if it be brought in any county) *uſque ad quatuor wardas propinquiores. Et ulterius quouſque, et c. Et ſi predictus felo, qui modo comparet, feloniam predictam vult contradicere, predict.* R. *hoc paratus eſt verificare et verſus cum probare prout curia, &c.*

And the like declaration is in burning of houſes, and of burglary, *mutatis mutandis.*

And the defendant in this appeal ſhall have the ſame trial as he ſhall have in the appeal before rehearſed, to put himſelf upon the iſſue triable by the enqueſt, or to wage battle if he pleaſeth.

But there are certain things which ſhall put the ſame from that advantage, that he ſhall not wage battle, &c. *viz.* If the defendant be indicted of the ſame felony, &c. and if the plaintiff be mayhemed by the defendant, or by another as I conceive; or if the defendant be taken in the maner, or if the plaintiff be within age, or above the age of

forty years; or if the plaintiff be a woman or the like.

And note that if the appeal of murder, robbery, or rape be brought in the King's Bench, and iſſue be taken before the juſtices of aſſize, if the plaintiff be non-ſuit, they have not power to arraign the defendant; but if the appeal be brought before them, and afterwards the plaintiff is non-ſuit, it is otherwiſe as it ſaid.

And there is another difference when a man is arraigned at the king's ſuit, and when at the ſuit of the party; for if he be arraigned at the king's ſuit he ſhall be put to anſwer the felony, whether he be of that name or of another name; and it ſhall be no plea for him to ſay, that he is not of that ſurname, nor known by ſuch a name, but by another name; for if a man killeth another and is indicted thereof, he ſhall anſwer to the felony, and ſhall not be admitted to plead miſnomer; but if it be at the ſuit of the party it is otherwiſe; as if a man bring an appeal againſt another, there he ſhall be admitted to have the plea, and that is the difference.

Note, that if a man bringeth an appeal of the death of a man, who hath lawful cauſe to have the appeal, and after declaration he is non-ſuit, the defendant ſhall be arraigned a-new at the king's ſuit; but if the heir of the dead ſueth the appeal, his wife being alive, and after declaration the heir is non-ſuit; the defendant ſhall not be arraigned a-new

at the king's ſuit, becauſe that none could ſue the appeal but the wife, and ſo the declaration was without warrant. And *quære*, how that matter may appear to the court.

And if one be acquitted in appeal, or indictment wherein there is no error in the original; he ſhall be arraigned *de novo* at the king's ſuit, although that error be in the *capias* or exigent. But if error be in the original, and he is acquitted, he ſhall be arraigned *de novo* at the ſuit of the king, becauſe that his arraignment was never warranted but without warrant; for when the king is aſcertained of a felon, and of the day and year, if the felon be not lawfully acquitted of the ſame felony he ſhall be arraigned at the king's ſuit. But if he be once lawfully acquitted of the felony, he ſhall never put his life in hazard again for the ſame felony, if it be not for murder, in which caſe, it is ſaid, that if a murderer be acquitted within the year at the king's ſuit, he may be afterwards in an appeal arraigned within the year at the ſuit of the party, *&c.*

And if an appeal of murder be brought before the ſheriff and coroner in the county, it is ſaid, that it may be removed into the King's Bench by a writ, which ſhall be directed to the coroner, and not to the ſheriff, becauſe that the coroner hath the record; yet I think the law is otherwiſe.

And if one be indicted for murder, and afterwards an appeal is brought againſt him, and after declaration the plaintiff is non-ſuit, the appellee ſhall be arraigned at the king's ſuit upon the declaration, and not upon indictment, as it is holden in 4 *E.* 4.

Note, that it was ſaid by ſome juſtices in times paſt, that in every caſe where the defendant pleadeth a matter, whereby he proveth that the action doth not lie for the plaintiff, as baſtardy, or never accoupled in loyal matrimony, &c. there he need not to anſwer to the felony; but if he pleadeth a releaſe in bar, then he ought to plead to the felony, becauſe it is not denied by him that the action once lay for the plaintiff, for when he pleadeth to the felony, then he confeſſeth that the plaintiff is ſuch a perſon who can maintain the action; yet it was ſaid to the contrary, that he ſhall not plead to the felony *in favorem vitæ*, where otherwiſe if the plea were found againſt him, he ſhould be attainted, and the felony not enquired of, and that ſeemeth to be both reaſon and law, *&c.*

And note, that when a man is found guilty for murder or felony, &c. for which he ſuffereth death, he may pray his book to ſave him if he be a clerk, and ſhall have it if he can read. But if that bigamy at another time convicted, be alledged againſt him, and proved, then he ſhall not have his clergy.

And it was ſaid, that if the ordinary refuſeth a clerk generally, or ſpecially, that the

judge

judge may compel him to accept the felon. But the old law was, that if the ordinary had refuſed him ſpecially, as to ſay, *non habet veſtem clericalem, non habet tonſuram*; yet the judge might compel him to accept of him. But if the ordinary do refuſe him generally, the judge cannot compel him to accept of him, becauſe there may be ſome cauſe wherefore the ordinary by the law of holy church ought not to receive him. But that opinion, as it was ſaid, was altered in the time of *William Huſſey*, and his reaſon was, that if this judge be his judge, where the ordinary refuſeth him ſpecially, it is as great reaſon that he ſhall be his judge where he refuſeth him generally.

And ſee, that thoſe who are ſo attainted of murder, or of other felonies, and for ſuch things as they ſhall ſuffer death, they ſhall forfeit their lands and tenements, and their goods and chattels for ever, and the king ſhall have the lands for a year and a day, and then the lords of whom the lands are holden ſhall have them. But he who is attainted of treaſon, the king ſhall have all his lands, as well thoſe which are holden of other lords as thoſe which are holden of himſelf, &c. And if a man hath land in the right of his wife, and is attainted of felony, the land ſhall be forfeited for the term of his life; and it was ſaid, that if before the attainder, he and his wife were diſſeiſed, and afterwards he were attainted and reſtored to the king's peace; yet they could not have an aſſize. *Tamen quære.*

Appeal

Appeal of rape.

NOTE alſo that the appeal of rape beginneth thus:

Robertus Wood *nuper de* A. *in comitatu Salop clericus, dict.* R. W. *nuper de* A. *in comitatu predict' capellanus rector eccleſiæ parochialis de* A. *in comitatu predict.* or thus; *nuper de* D. *in comitatu predict. gent. alias dict.* R. S. *nuper de* D. *in com. predicto yeoman attachiatus fuit per corpus ſuum ad reſpondendum Aliciæ* G. *de raptu ipſius Aliciæ, & pace dom. regis nunc fracta, unde eum appellat. Et ſunt plegii de proſequend.* A. D. *de* C. *in comit.* C. *gentleman, &* E. I. *de* M. *in comitat.* C. *yeoman, &c. Et unde eadem Alicia in predict. perſona ſua inſtanter appellat predict.* R. W. *de eo quod ubi predict. Alicia fuit in pace dei & domini regis nunc apud* A. *predict. in comit. Salop,* 8 *die menſis Maii ann. regni dom. regis,* 17. *circa horam ſextam poſt meridiem ejuſdem diei, ibidem venit predict.* S. *felonicè ut felo predict. domini regis nunc inſidiand. & inſultu premeditato, contra pacem ejuſdem dom. regis, coronam & dignitatem ſuas, die, anno, hora, & loco in comitatu predict. & in prefatam Aliciam adtunc & ibid. inſultum fecit, & ipſam adtunc & ibid. de virginitate defloruit, contra voluntatem ſuam rapuit & carnaliter cognovit, & ſic predict.* R. S. *predict. Aliciam modo & forma predict' rapuit, & quam cito idem felo feloniam & raptum predict. feciſſit, fugit, dictaq; Alicia ipſum recenter inſecuta fuit de villa in villam uſq; quatuor*

tuor villas propinquiores, & ulterius quouſq; &c. Et ſi idem felo feloniam et raptum prediƈt. in forma prediƈt. impoſit' dedicere velit, prediƈt. Alicia hoc parata eſt verificare et verſus eum probare, prout curia, &c.

And if a man ſueth an appeal of the rape of his wife, although ſhe be not his wife in right, but in poſſeſſion, yet the appeal doth well lie as is ſaid; otherwiſe it is in an appeal of murder brought by a woman of the death of her husband, for there it is a good plea, that they were never lawfully coupled in matrimony.

Appeal of mayhem.

SEE alſo that the appeal of mayhem is as followeth: *viz.*

I. N. *in propria perſona ſua hic inſtanter appellat* W. *de* F. *de eo quod cum idem, quære tali die & anno, fuit in pace dei, et dom. regis nunc, &c. apud talem villam in tali comitatu circa horam ſextam, &c. Ibi venit prediƈt.* W. *vi et armis, viz. baculis ut felo domini regis nunc inſidiand. et ex inſultu premeditat' adtunc et ibid. in diƈtum* I. *inſultum fecit et adtunc et ibid. eum quodam baculo precii, &c. quem prediƈt.* W. *in manibus ſuis adtunc et ibid' tenuit, prediƈt. querentem ſuper brachium dextrum felonicè tunc percuſſit, per quod venæ et nervi brachii ſui prediƈt. reſtriƈti fuerunt annexi, et mortificat' devenerunt*; or, *cum quodam gladio, vel cultello precii &c.*

&c. quem defendens in manibus ſuis adtunc et ibid. tenuit manum dexteram, vel pollicem manus dexteræ, vel aliud membrum, vel auriculam, vel aliquam juncturam membri querentis felonicè amputavit, vel oculum ſuum evulſit, vel dentes ſuos anteriores fregit et depoſuit, et ſic idem defendens ut felo dom. regis predict. quer. adtunc et ibid. felonicè mayheymavit, contra pacem dicti dom. regis, coronam et dignitatem ſuas. Et ſi defendens hoc velit dedicere, querens hoc paratus eſt verſus eum probare, prout curia dom' regis de eo conſideraverit, &c.

And notwithſtanding that the plaintiff declare in an appeal of mayhem, that the defendant hath mayhemed him felonioufly, yet the defendant ſhall not ſuffer the puniſhment of death, but ſhall anſwer damages according to the greatneſs and grievouſneſs, of the offence, &c. And if the plaintiff declareth in an appeal of mayhem, &c. and the defendant prayeth that it may be viewed if it be a mayhem or not, *quære*, if the juſtices ſay, that he is mayhemed, if it be peremptory to the defendant, ſo that he ſhall not be afterwards receivable to plead Not guilty to it, or any other bar. And I conceive it is peremptory, &c. And in appeal of mayhem the plaintiff declared, that the defendant ſtruck him upon the head, ſo that he had loſt his hearing, and becauſe the juſtices talked to him, and well perceived that he could hear they ſaid, that the plaintiff ſhould be fined, &c.

And ſee that if the defendant in an appeal

peal of mayhem ſaith, that the plaintiff at another time brought an action of treſpaſs againſt the ſame defendant, and ſued forth the ſame mayhem, and recovered damages for the ſame, and ſued execution, if the ſame be a good plea or not, &c. And it was ſaid, that by an appeal of mayhem a man ſhall not loſe his action of treſpaſs, but contrary-wiſe, he ſhall not have an appeal after he hath once recovered in treſpaſs for the ſame mayhem. *Quære* what the law is.

And in an appeal of mayhem againſt two, the plaintiff declared againſt one as principal, and againſt the other as acceſſary, and it was challenged becauſe that all ought to have been principals, and the court ſaid, it was in his election, ſo that the declaration one way or the other was good enough. And it was ſaid by ſome, that it is no mayhem to cut off one's ear, whereby he loſeth his hearing, &c. but the beating out of his teeth is a mayhem, becauſe he may by them defend himſelf in battle. *Quære* if in the firſt caſe it be not a mayhem, &c.

Indictments.

THERE are alſo indictments upon which a man ſhall be arraigned, upon which if he be found guilty he ſhall be executed, &c. and firſt ſee indictments upon the view of the body taken before the coroner in the county. *Inquiſitio indent' capta apud* B. *in com.* N.

20 *die menſis Maii anno regni nunc regis Henrici octavi* 20. *coram* I. W. *uno coronatorum dom. regis nunc com. predict. et ſuper viſum corporis cujuſdam* I. F. *ibid. jacent' interfect. per ſacramentum* I. S. W. C. &c. *Qui dicunt ſuper ſacramentum ſuum, quod quidam* I. N. *de London gent.* 20 *die, &c. ann. &c. vi et armis, viz. gladiis, baculis et cultellis animo felonico et ex malitia precogitata in prefatum* I. F. *apud* B. *predict. inſult. fecit et ipſum verberavit, vulneravit et male tractavit, ac dict.* I. F. *cum quodam cultello vocat' a wood knife precii* 12 *d. quem ipſe in manibus ſuis adtunc tenuit, prefat.* I. F. *adtunc et ibid. uſq; ad medium corporis ſui felonice percuſſit atq; invaſit in profunditatem decem pollic. dans ei plagam mortalem, de qua quidem plaga dict.* I. F. *infra unam horam tunc proxime ſequent. adtunc et ibidem obiit, et ſic predict.* I. N. *eundem* I. F. *adtunc et ibidem felonice interfecit et murdravit, contra pacem dom. regis, &c.*

And it was ſaid, that the coroner hath not power to take any enqueſt of the death of a man, if not upon the view of the body; and if he do it in other manner, all that he doth is void.

And it hath been uſed in times paſt, that the coroners might record the breaking of priſon by the priſoners which are in them, and if the priſoners were in for felony they were put to execution without further anſwer; but *quære* if any ſuch law be now in uſe.

And a coroner might take an appeal of an approver, of felony done in any county of

England,

England, and in the ſame manner he might make abjuration, if he confeſſed the felony to be done in another county than in the county where the coroner dwelt. And the reaſon was, becauſe by that confeſſion they ſhall be attainted. But he cannot ſo do in an appeal of robbery, if the felony be not done within the ſame county.

There are alſo divers indictments, as of robbery, burglary, and other felonies which are mentioned in ſundry books, and the courſe of them is well known, becauſe they are common, and in daily uſe and experience.

If a man be indicted that he felonioufly cut down trees, &c. in ſuch a place, and carried them away, the party ſhall not be arraigned upon ſuch indictment, becauſe it cannot be ſaid to be felony.

A man was indicted for that he traiterouſly &c. had made 100 *s.* of alchemy to the likeneſs of the king's money, and it was moved that the indictment was inſufficient, becauſe it was not put certain what money he made, groats or pence.

A man was indicted, that whereas another man was indicted of felony who was put into the ſtocks, &c. that he entered into the houſe without breaking of the ſame, and ſet him out of the ſtocks, and ſet him at liberty, and it was ſaid, that it remained in the pleaſure of the king, whether he ſhould have perpetual impriſonment, or other pecuniary puniſhment according to the king's ordinance, but he ſhall not be hanged, &c.

And

And ſee that it was the uſe in times paſt, that the party ſhould not be reſtored to his goods upon an indictment of robbery, unleſs it were found that he made freſh ſuit, if he were not appealed, yet that law is altered and changed, and the party ſhall be alſo reſtored to his goods where the felon is arraigned upon an indictment as well as upon an appeal, if the party giveth evidence againſt the felon at the time of his arraignment, and he ſhall not be put to circuit of action to ſue his appeal, and it ſeemeth to be good law.

Note, that the writs are the principal and firſt thing in our law, whereby a man ſhall recover that which is wrongfully detained from him, and they are the foundation of every ſuit; and therefore look when a man beginneth his ſuit that the writ be good, elſe all which followeth will be nothing worth; which writs are ordained by law according as the matter is.

And there ſee firſt the writ of right and the nature of it, becauſe it is a writ of a higher nature than any other writ can be; and the chief things and articles of that writ are, the deforcement, the quantity of the tenements, in what town the tenements are, and that the demandant hath a lawful eſtate in fee by his own purchaſe, or of the ſeiſin of his anceſtor, or his own ſeiſin, the taking of the explees and the ſeiſin thereof, in the time of what king, and in the time of peace, and

the tender of the demy mark a good discent, and in what manner he hath right, and the averment.

And note, that the explees ought to be of the demesne or of the services, and in a *precipe quod reddat* of the manner of explees in services, &c. and of the demesnes in sheep and corn, in pasture in feeding of cattle, of wood, in selling of the wood, gardens, in selling the apples, or grass, of villain, is in base service to his profit, and in seisin of those of his blood; and for a chaplain, or finding of poor men, the explees are alledged in masses and prayers, &c. and of a gorge in taking of the fish; of a mill, in taking of toll: and generally a man shall alledg eexplees according to the matter in demand and the nature of it.

And the trial in this writ of right may be two ways; the one by the grand assize, and the other by battle; but if the right be to be determined by the battle, it shall be done by champions, and not by the parties themselves, as it is said; and the reason is, that if any of the parties be killed, judgment of the land cannot be given against a dead person. *Quære* if that be the reason or not.

And it was said, that a man cannot have a writ of right of a rent, but only of a rent-service, for that other rents are against common right, &c.

And see that a writ of right doth differ from other writs in pleading, for in a writ of

right

right, the tenant ought to conclude upon the right. To conclude, ſo that he hath more right to have the lands, &c. than the demandant, and not to conclude judgment of action, as the concluſion is in other writs, yet the ſame holdeth not in every caſe; for if the tenant in a writ of right plead a releaſe collateral, &c. without warranty, there the tenant ſhall conclude judgment if action, and not otherwiſe as it ſeemeth; for the demandant hath more right to the land than the tenant hath, but by reaſon of the warranty the demandant ſhall be barred of his action.

And note, that in a writ of right upon the trial no attaint lieth, and yet in a writ of right of dower an attaint lieth, which is, a writ of right; but the reaſon is, becauſe the trial thereof ſhall not be by the grand aſſize, nor by battle, but by a common jury, &c.

And note, that there are divers writs of right; a writ of right which is triable by battle, or by grand aſſize, as a writ of right of land, or a writ of cuſtoms and ſervices, a *quod permittat* in the *debet*, writ of right of advowſon, &c. and the like. And there are other writs of the poſſeſſion mixt with the right, as a writ of eſcheat, ceſſavit, rationable part, &c. and the like, but in thoſe no battle nor grand aſſize lieth.

In a writ of cuſtoms and ſervices, the effect thereof is the wrongful deforcement in not doing of the ſervices which ought to be done to the demandant out of the land, and

the land ought to be ſhewed, and how he holdeth by ſuch ſervices, and ſhew ſeiſin in him or his anceſtors of fee and right, and alledge the taking of explees, and the averment.

The articles and things which are material in the writs, appear in the writs themſelves, and in the book of *novel tales*, and in other books, and therefore they need not be here mentioned, and for that cauſe I omit them here, &c.

An Indictment upon the ſtatute of 8 H. 6.

JUrator. præſent. pro Dom. rege, quod cum in ſtatuto in parliamento Dom. nuper regis Henrici Angliæ ſexti poſt conqueſtum apud Weſtm. anno regni ſui 8. *tent. edit. inter cetera ordinatum ſit quod ſi aliqua perſona expulſa ſit ſeu diſſeiſita de aliquibus terris et tenementis modo forcibili, aut pacifice expulſa ſit, et poſtea manu forti et armis extra teneatur contra juſtic. pacem vel poſt aliquem talem ingreſſum aliquod feoffamentum ſeu diſcontinuatio aliquo modo inde factum ſit ad jus poſſeſſor. defraudend. aut tollend. quod pars in ea parte gravata habeat aſſiſſam novæ diſſeiſinæ aut breve de tranſgreſſione verſus hujus diſſeiſitorem, et ſi pars gravata recuperaverit per aſſiſam vel rationem tranſgr. et per veredictum alio modo per debitam legis formam ſit compertum quod pars defendens in terras et tenem. vi ingreſſus fuit, aut ea per vim poſt ingreſſum tenuerit, querens recuperet*

cuperet verſus defendentem damna ſua ad triplicem, et ulterius finem faciet Dom. regi, et redemptionem prout in ſtatuto pred. plenius continetur, &c. quidam tamen L. C. *de* E. *in com. pred. generoſus ſimul cum quinq; perſonis juratoribus pred. ignotis ſtatutum illud minime ponderans, die Dom.* 20 *die Januarii circa horam* 9 *poſt meridiem ejuſdem diei anno regni Dom. regis nunc* 12 *manu forti ac vi et armis, viz. baculis et cultellis in unum meſſuagium, unum gardinum ducentas acras terræ* 40 *&c. prati, et* 30 *acras boſci cum pertinen' quorundum* E. K. *armigeri et* L. M. *armigeri, &c. ſcituat. jacen. et exiſten. in parochia de* L. *juxta* T. *in com. pred. ingreſſus fuit, et inde ipſos* E. K. *et* L. M. *vi et armis, viz. baculis et cultellis ac manu forti diſſeiſivit. Et ejus inde ſtatum et poſſeſſionem ſic per diſſeiſinam illam habitam et obtent. cum pred. perſonis ignotis uſq; in craſtinum diem ſequentem, viz.* 13 *diem menſis Januarii continuavit. Quo quidem* 13 *die Januarii* H. L. *de.* M. *in comitatu pred. yeoman,* W. B. *de pred. huſbandman, et* I. C. *nuper eiſdem villa et comitatu laborer apud* L. *pred. in et ſuper tent'ta pred. una cum prefato* T. C. *manu forti ac vi et armis, viz. bacultis, cultellis, gladiis, ſcutis, arcubus et ſagittis ſe aſſemblaverunt, et eadem tenementa vi et armis pred. a pred.* 12 *die Januarii hucuſq; injuriis ipſius* T. C. *et ipſum* T. *pretenſa tenuerunt et prefat.* E. K. *et* L. M. &c. *inde hucuſq; extra tenent in dicti Dom. règis nunc contemptum ac contra formam ſtatuti pred. et contra pacem dicti Dom regis, &c.*

When the parties are at iſſue in their acti-

ons the common trial thereof in our law is by verdict of 12 men, who ſhall be ſworn upon the book to ſpeak the truth according to their conſcience. And ſometimes the matter ſhall be tried by the biſhop, and not by verdict of 12 men; as general baſtardy alledged in any of the parties it ſhall be certified by the biſhop, and in a *quare impedit* if the iſſue be joined upon the inſtitution, it ſhall be tried by the biſhop, for the ſame is in a manner a ſpiritual thing. But induction ſhall be tried by a jury, and alſo in a *quare impedit*, if iſſue be taken upon plenarty it ſhall be tried by the biſhop; but whether the church be void or not void ſhall be tried by the jury. And if the parties be at iſſue in a *quare impedit* upon the ability of the perſon, whether he were ſufficiently learned or not, it ſhall be tried by the biſhop during the life of the clerk, but if the clerk be dead it ſhall be tried by the jury. And it is ſaid, that if baſtardy or other the like thing be alledged upon a thing which is not but dilatory, it ſhall be remanded to the biſhop to be tried, &c.

And a man in an action of debt brought againſt him upon a contract may wage his law, to ſwear upon a book that he oweth not the plaintiff the money which he demandeth, nor any penny thereof; and he ought to have with him 11 more to ſwear with him, that they believe in their conſcience that he ſayeth truth, and ſo he ſhall be diſcharged; but if the action be brought upon any ſpecialty,

cialty, or upon matter of record, or upon a thing touching land, &c. he ſhall not help himſelf in that manner, but ſhall put the ſame upon the trial of the jury, but he himſelf ſhall not be admitted to ſwear, &c.

And note, that an oath ought to have three companions, truth, juſtice, and judgment, and if they be wanting it is no oath, but a perjury; for if a man be forced by conſtraint to ſwear, that for many years he quietly held ſuch lands, &c. it is perjury, not in him who ſweareth, but in him who compelleth him to ſwear, *Reum non facit niſi mens ſit rea. Nemo ſe circumveniat aut ſeducat. Qui per lapidem falſe jurat perjurus eſt. Quacunque arte verborum jurat aliquis, Deus ita accipit ſicut ille qui jurat intelligit. Et minus malum eſt per Deum falſum jurare veraciter, quam per deum verum jurare fallaciter. Quanto enim id per quod juratur eſt magis ſanctum, tanto magis eſt penale perjurium, &c.*

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